STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 148

14521

Ohling
vs
Luttgens

1863

24

State of Illinois } ss In the Circuit Court of
Stephenson County } Stephenson County Illinois
of the December Term AD 1862

Lutzin Lutzin
vs
Berentzin Ohling
et al } No. 98 Chancery

This cause having this day been brought on to be heard upon the pleadings and the proof taken therein and it appearing to the Court that the said Defendants on the fourth day of December AD 1855 sold to the Complainant the land and premises described in the Complainants Bill, as the South East quarter of Section number twenty five (25) in Township number twenty six (26) of Range Number Eight (8) situated in Stephenson County Illinois for the Consideration of two thousand five hundred and fifty dollars and that the said defendants on the tenth day of December AD 1855 made executed and delivered to said Complainant their certain deed conveying called a warranty deed for said land & premises and in which deed the said defendants for themselves

and their heirs executors and administrators covenanted to and with the said Complainant his heirs and assigns that they were lawfully seized in fee simple of said above described premises and that the same were free from all incumbrances and that the said defendants for themselves and their heirs executors and administrators further covenanted to and with the said Complainant in said by said deed to defend said premises to the said Complainant his heirs and assigns against the lawful claims and demands of all persons whomsoever, and it also further appearing to the Court that at the time of the sale of the said premises and the execution and delivery of said deed by said defendants to said Complainant as aforesaid that said Complainant paid to said defendants as part of the purchase money for said premises the sum of one thousand dollars cash in hand and for the balance of the purchase money the said complainant made executed

26

and delivered to the said Defendants his three several promissory notes, the first one calling for four hundred dollars bearing date December 4th A.D. 1855 & due in one year after the date thereof, and the second of said notes bearing date the fourth day of December A.D. 1855 calling for six hundred dollars and due in two years from the date thereof and the third said notes bearing date the fourth day of December A.D. 1855 calling for five hundred and fifty dollars and due in three years after the date thereof, said notes amounting in the aggregate to the sum of fifteen hundred and fifty dollars, and it further appearing to the Court that said notes were at the time of the commencement of this suit and of the hearing of this cause outstanding against said Complainant and that said notes have never been delivered up to said Complainant by said Defendants, upon the four hundred dollar note mentioned, of which said notes said Complainant paid said

Defendants, the further sum of two hundred and Eighty four 4/100 dollars on the third day of August 1857 and it further appearing to the Court that at the time of said Conveyance of said premises from said defendants to said Complainant there was existing upon said premises a prior incumbrance by virtue of a mortgage thereon dated August 8th AD 1856 to secure the sum of four thousand dollars with interest thereon and it further appearing to the Court that the title to said premises in the said Complainant has been defeated and that the Complainant has been evicted from said premises under a paramount title existing upon said premises by virtue of said incumbrance resting upon said premises at the time of said Conveyance from said defendants to said Complainant. It is therefore ordered, adjudged and decreed that the Complainant have and recover of and from the said defendants the sum of two thousand five hundred and fifty dollars the consid-

ration money mentioned in said deed and interest thereon at six per cent from the fourth day of December AD 1855 amounting in the aggregate to the sum of three thousand six hundred and twenty six dollars. It is therefore ordered, adjudged and decreed by the Court now here that the said Defendants do pay or cause to be paid to the said Complainant the sum of three thousand six hundred and twenty six dollars within ten days after the rising of this Court together with interest thereon from the date of filing of this decree and that in default of such payment Execution be issued from this Court against the goods and Chattels, land and tenements of the said defendants for the collection thereof, and it is further ordered adjudged and decreed that the said Complainant have and recover of the said defendants his costs and charges about this suit in this behalf expended and that he have execution therefore

Benj R. Shelden

Filed Dec 20. 1862
J. H. Roffee Clk
per E. R. Hodges Dep

30

Lutzen Lutzen
vs.
Benentzie Ohling
Et. al.

Ill. Co. Cir. Ct. Ills.
December S. 1862
Dec. Term 1862

Bright reads Bill

Meacham reads Dfts answer.

Urban D. Meacham

Declines answering whether he has the notes described in the Bill or not.

— Excepted to —

Heike Ohling

Knows Compt. Ruled by the Court that H. K. need not testify as a witness.

— Excepted to —

Benend Diddens

Known Compt. from childhood, Knows Benefie Ohling & Heike & Paul & Adde Borchs. Knows the land in dispute. Land in Sec. 28. North East quarter 28. Township, don't know it. Was present when Compt. paid $1000 on the land — at Lawyers — when the deed was made — in Freeport — don't recollect the Lawyers — $1000 in gold & some in paper — dont know how much of each. Heike & his brothers, Mother, all who signed the deed. Could not read english. Compt. is a German & cannot read German or English — Is a Hollander.

Compt. moved on the land 6 years ago next spring. Vacant prairie – unimproved. Compt lived on the land 6 years last spring. Knew Rudolf Ohling decd. Died about – can't say how many years. Don't know whether Compt gave any notes or not. Can't tell whether notes given or not. Something to that effect was given. (Deed of Defts copied in Bill of Compt. here offered in evidence)

Cross Examined

$1000 paid at the Ladyes office wit. saw it paid. Paid in gold & notes. Can't say how much of each. Saw all the papers drawn up. Besides parties, cannot tell who was present. Office on this side of Stephenson Street. Have seen Meacham before – might have been him – many times. Said $1000 was paid. Think Seitzin, son of Compt was present – not certain.

Utze Collman

Know parties. Know land in dispute. S.E. ¼ Sec 25. T 26. R 8. Compt moved on in 1856. Not present when bargain made or money paid.

82

Only knows what he has heard about it. Never heard Berentzin or Dicke or Paul or Berches say any thing about giving a note. Went in possession in 56 — wild prairie — in possession till Mitchell bot. Don't know year. Complt. broke it. Broke 146 acres. Fenced it all on 2 sides. Built 3 houses. wood houses. Made a well. Trees planted. — Twenty trees — can't say — I examined improvements. Compl. wanted me to appraise houses & improvements — worth $1077 3/100 — worth $20 to $25 per acre when it was taken from Compl. Much as he knows it was taken from Compl. Mitchell told wit. he bot. it. was not at public sale. Ohling when he died left children — Paul — Dicke — Jonicke. My land corners on land in dispute. I am a farmer. I have a list of improvements made on the land by Compl. Compl. made them — they are fence on south side — 291 post holes. 500 odd stakes — 291 posts & setting up — 582 posts — this on south side — on west side — 571 board & post & rail & stake fence — 113 posts without holes — 880 odd feet of fencing — 360 stakes Breaking 145 acres badly done by Sutzen — $3.50 per acre — Houses. one $125. one $120. one $100 — stabling not appraised —

Ulrich Collman Cont'd

Broke in 56. 57. & 58.

Crop 57. wheat. good crop one year - can't tell what year. Think 57 crop middling. Land not all in cultivation in 57. Can't say whether part broke all down - think it was. Can't tell how much. Very poor crop 58. Oats poor, wheat & corn middling. 59 crops some better. All in crop in 59. 60 good crop. 61 crop not very good. Can't tell what land is worth per acre. Pretty good land. Land rents for 1/3 - tenant finds every thing - Son of Compl son in law lived on the place & old man lives with his son. I have lived there 6 or 7 years. Compl went on in 56. Now live on it -. Ludlow Dulzman never lived on land. Think D. broke part of the land - but don't know. Sutzen had no other farm this Compl knew of

John Hawn

Know parties. Knows land. Live near it. Lived there 13 years. Compl moved on the land in 56 - Unimproved - it prairie at the time. Knows what improvements Sutzen made. Improvements are breaking - fencing - building houses digging well - setting out trees. Said it

18th Nov 1860 – Improvements worth $1077 13/100. Collman with me at the time. Small stable on the land. Did not see Compl pay money. Ohling had six children Dike – Paul & Barel wife to Jaintz – widow Renutze – Don't know how long Compl was in possession. Fence on North side worth $80 86/100 – South side $72 27/100 –

Riebke Ribkes

Know parties. Knows land in dispute – Compl moved on land in May 1856. I am now in possession. Took possession 2 years ago in Sept 60. Compl gave up possession at that time. Heard testimony of Harm & Collman in this case. Know improvements. Compl made them in 56 & 57 – I got part of the land from Mitchell – Produces deed to him from Mitchell. Wild prairie when Compl took possession in May 56. I paid $20 per acre for 60 acres of the land. Putnam came & told Sutzen he had to give up possession of the land. Putnam told him not to plow – that he must rent or lose the land or do no more farming – this he told to Sutzen –

Here Compl introduced and gave in

evidence the deed by James Mitchell & wife to Reibke Reibkes — war. deed — Dated Sept 29th 60. of which the following is a copy. viz.

This Indenture made this twenty ninth day of September in the year of Our Lord One thousand Eight Hundred and ~~Fifty~~ Sixty — Between James Mitchell & Catherine his wife of the City of Freeport County of Stephenson and State of Illinois of the first part and Reibke Reibkes of the aforesaid County of Stephenson and State of Illinois of the second part witnesseth that the said party of the first part for and in consideration of the sum of Twelve Hundred Dollars to them in hand paid the receipt of which is hereby acknowledged, Have granted, bargained, sold, conveyed and Confirmed and do hereby grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever all that tract or parcel of land situate and being in the aforesaid County of Stephenson and State of Illinois and known and described as follows, to wit: Sixty acres off of the North side of the south east quarter

of Section No Twenty five (25) Township No Twenty six (26) North of Range Eight (8) East of the 4th Principal Meridian in the State of Illinois. Together with all and singular the appurtenances thereunto belonging or in any wise appertaining to have and to hold the above described premises unto the said party of the second part and to his heirs and assigns forever and the said parties of the first part for themselves their heirs, executors and administrators do covenant and agree to and with the said party of the second part his heirs and assigns that they are well seized of the premises above conveyed as of a good and indefeasible inheritance in the law in fee simple and that said premises are clear from all incumbrances whatever, and the said parties of the first part the aforesaid premises unto the said party of the second part and his heirs and assigns against the claim and claims of all and every person whomsoever do and will warrant and forever defend by these presents— except taxes of 1860. In witness whereof the said parties of the first part have

hereunto set their hands and seals the day and year first above written
Executed in presence of.

James Mitchell (Seal)
Catharine Mitchell (Seal)

State of Illinois }
Stephenson County } ss

I. Gustave Dorn a Justice of the Peace in and for said County do hereby certify that James Mitchell and Catharine Mitchell personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same appeared before me this day in person and acknowledged that they signed sealed and delivered the same as their free and voluntary act, and for the uses and purposes therein set forth. And the said Catharine Mitchell personally known to me to be the wife of the said James Mitchell and as the person who subscribed said deed and as such have been by me made acquainted with the contents and meaning of said instrument of writing, separate and apart from her said husband acknowledged that she had executed the same

and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely and without compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and seal at Freeport this second day of October A.D. 1860 Gustus Dorn J.P. (Seal)

Sutzin did not consent that I might take possession. Had no talk with Compl about it. I talked with Compl about buying if Compl could give a good deed.

Henry Sutzin

Knows parties. Knows land in dispute. I am son of Compl. Compl took possession in May 56. Remained in possession about 3 years or till Sept 60. Compl made the improvements while on the land in 56 + 57. I got part of the land ~~off~~ from Mitchell – produces deed – took possession when I got deed from Mitchell. Putnam came out & notified Compl not to plow or do more

on it without buying. I bot 100 acres. Ribble Ribbles bot 60 acres. I paid 20 per acre. Compl lived with me. I am married and keep my father & Mother — Wild prairie land when Compl took possession in May 56. Not present when Compl bot of Defts. I & Ribbles took possession of the land as soon as we bought it. Then Compl gave in evidence the deed from James Mitchell & wife to Henry Lutzin — warranty deed — dated Sept 29th 1860. of which the following is a copy viz:

This Indenture made this Twenty Ninth day of September in the year of Our Lord One thousand Eight hundred and Sixty, Between James Mitchell and Catharine his wife of the City of Freeport County of Stephenson and State of Illinois of the first part and Henry Lutzins of the aforesaid County of Stephenson and State of Illinois of the second part. Witnesseth: that the said party of the first part for and in consideration of the sum of Two thousand dollars to them in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and do hereby grant, bargain, sell, convey and confirm unto the said party of the second part

40 and this heirs and assigns forever all
tract or parcel of land situate and
being in the aforesaid County of Stephenson
and State of Illinois and known and
described as follows to wit: The South East
quarter of Section No Twenty five (25) Town=
ship No Twenty six (26) North of Range No Eight (8)
East of the fourth principal meridian in the
State of Illinois. Except Sixty acres off of the
North side of said quarter Section this day
deeded and conveyed to Reibke Ribbes
Together with all and singular the appur=
tenances thereunto belonging or in any
wise appertaining. To have and to hold
the above described premises unto
the said party of the second part and to his
heirs and assigns for ever. And the said
parties of the first part for themselves and
their heirs, executors and administrators
do covenant and agree to and with the
said party of the second part his heirs
and assigns that they are well seized of
the premises above conveyed as of a
good and indefeasible inheritance in
fee simple. and that ~~the~~ ~~said~~ premises
are clear from all incumbrances
whatever. And the said parties of the
first part the aforesaid premises

unto the said party of the second part and his heirs and assigns, against the claim and claims of all and every person whomsoever do and will warrant and defend by these presents, except taxes of 1860. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written

Executed in presence of } James Mitchell (Seal)
Catharine Mitchell (Seal)

State of Illinois
Stephenson County } ss I, Gustav Dorr a Justice of the Peace in and for said County, do hereby certify that James Mitchell and Catharine Mitchell personally known to me to be the person whose name are subscribed to the foregoing deed, as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed and delivered the same as their free and voluntary act for the uses and purposes therein set forth. And the said Catharine Mitchell personally known to me to be the wife of the said James Mitchell and as the person who acknowledged said deed, and as such having

42

been by me made acquainted with the contents and meaning of said instrument of writing separate and apart from her ~~said~~ husband, acknowledged that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion of her said husband, and that she did not wish to retract the same. Given under my hand and seal at Knoxport this second day of October A.D. 1860

Gustav Dorr J.P. (Seal)

Cross Examined

Father lives with me; I bot land on credit at $20 per acre

Direct resumed

Paid cash $700. Paid balance in fall. Borrowed the money and paid Mitchell for the land.

D.N. Funderland

Am C. Clk. Powers vs

of R. K. Ohling as Probated, Will offered in evidence. Given in evidence — as follows viz:

A. few days since Mr R. K. Ohling gave me to understand that he on account of sicknep wished by will and testament to dispose of his propertz. To this end he called upon me, the subscriber, a minister, besides both the undersigned witnepes today to come to his house. We found Mr. R. K. Ohling sick, and in bed, notwithstanding in enjoyment in his full senses, which Mr. Reichenback a physician who was present attested to, and concluded with his free will, and without compulsion by any one, he gave us his last will considered will to understand and desired me to write the same as following:

I the undersigned Roolf Kriens Ohling wish hereby expressly, that after my decease my beloved wife Berentze, whose maden name was Pauli, to become the sole hein of all my goods, property and effects, and in such manner that she during her life can use and control the same according as she thinks best and liks. Should she however marry again, then she shall hold and have no more than one third on as

44 much as the law allows her. After the death of my aforesaid wife, the following division of my property shall take place.
1st My first born son Dirke Roolf Ohling shall have the farm with the appertainments thereunto belonging of 160 acres of land on which he now resides.
2d My second son, Paul Janssen Ohling shall have the farm on which he now has erected the lime stone house besides 160 acres of land, the streams of running water between the aforesaid farmes which formes the line between said farmes shall belong to both of my sons for the joint benifit of both farms.
3d My Daughter Janneke Gerds Ohling united and married to Borchers shall have also after the death of my wife Berend's, whose maden name was Pauli, the farm containing 160 acres of land as her personal inheritance on which she now resides, but in as much as the buildings are more costly and expensive than those of the brothers, she shall be compelled to pay to her brothers upon her coming in possession of said farm $500 five hundred dollars, namely $250 to each one. The aforesaid farm which I have willed to my daughter Janneke Gerds

is occupied by herself and husband Addo Berchus, namely the one half and the other half by me and my wife. This farm my son in law has rented from me for the term of Eight years, and my express wish is that this contract shall remain in force in case of my death before the term expires.

Should my aforesaid daughter Janneke Gerds married to Berchus die without leaving children, then I do hereby ordain and order that the said farm, cum annexis, fall back to my ~~two~~ aforesaid ~~sons~~ two sons, except that my son in law shall claim as much as the law of the country shall give him.

My 40 acres of timber land shall be divided among the three aforesaid farms, and casting lots for the same, so that each of the children come in possession of $13\frac{1}{3}$ acres.

Should my two sons aforesaid who are born in our wedlock wish to buy the 160 acres of land which I have bought from Millette, and which is situated by or by the side of Heye Rints land at eight dollars per acre, they shall have the privilege to do so, and I approve

hereby expressly this probable purchase, They shall be obligated after the death of my wife to pay to their sister her proportionate share

All other real estate, demands. Cattle and stock, Household furniture, and other possessions which belong to me, shall belong to my aforesaid wife, and she shall have the unlimited controll over the same, and I do hereby again to prevent any mistake or misunderstanding, and by my signature declare that my cherished wife Berendje whose maden name was Pauli, during her life in case she does not marry again shall have and hold the aforesaid inheritance undisturbed and controll them as she thinks best.

According to her wish and desire that our first born son Dirk Roolf Ohling shall become her assistent. I therefore not only approve thereof, but it is my ardent wish and my conclusion. I pray that this my testament shall remain unchanged and unaltered, in as much as it is my last will which I have made upon due deliberation and freely, which I, the physician and two witnesses, through their own signatures attest the truth thereof.

Ridott, Stephenson County, August 21st
1855 the twenty first Day of August
Eighteen Hundred and fifty five.
(Seal) R. K. Ohling
(Seal) A. Reichenbach M.D. as witness
of the signature of his own hand.
(Seal) D. Dirksen as witness of the
signature of his own hand.
(Seal) G. Dirksen as witness of the
signature of his own hand,
(Seal) In fidem. G. D. Bleseney, Minister,
as witness the signature of their own
hands. and writer of the testament

Schon seit einigen Tagen gab Herr
R. K. Ohling mir zu verstehen, daß er
Krankheits halber wünschte über sein Vermögen
testamentlich zu verfügen. Zu dem Ende
befiehlt derselbe mich, den nachbenannten
Geistlichen, nebst den beiden gleichfalls eigenhändig
unterschreibenden Zeugen, heute noch seinem
Hause

Wir fanden den Herrn R. K. Ohling zwar
krank und im Bette, doch bei völligem
Verstandesvermögen, welches gleichzeitig
der zugegegenwärtige Arzt, Herr Reichenbach
attestirt, und entschlossen aus seinen Mitteln,
und ohne dazu von irgend jemand bestimmt

48 werden zu sein, und seinen letzten
rechtsbeständigen Willen zu erkennen zu
geben und ersuchte mich denselben wörtlich
und bündig niederzuschreiben, wie folgt:

" Ich, der eigenhändig unterschriebene Roolf
" Kriens Ohling verfüge hiermit ausdrücklich
" und auf das bestimmteste, daß
" nach meinem Absterben meine liebe
" Ehefrau Berrendje geb. Pauli, Universal-
" Erbin meines ganzen Nachlasses werden
" soll; also, daß sie zeit ihres Lebens
" in jeder und aller Hinsicht mit demselben
" schalten und walten kann und darf
" wie es ihr beliebt. Sollte sie jedoch zu
" einer anderen Ehe schreiten, so soll sie
" nur den ihr zustehenden gesetzlichen
" Antheil von einem Drittheil beanspruchen
" können. –

" Nach dem Absterben meiner geliebten
" Ehefrau aber will ich, daß nachfolgende
" Theilung stattfinde:

1, Mein erstgeborener Sohn Heike Roolfs
Ohling soll die Farm mit Behausungen
und 160 Acre Land haben, worauf er
jetzt wohnt

2. Mein zweiter Sohn Hans Janssen Ohling

soll die Farm worauf er jetzt das Backsteinerne Haus gebaut hat nebst 160 Acker Land wieder zugetheilt werden; das Kloster zwischen diesen beiden Farmen und welches die Grenze zwischen beiden so eben gedachten Farmen bildet, soll beiden Söhnen zum gemeinschaftlichen Gebrauch verbleiben

3. Meiner Tochter Fameke Gerds Ohling, verehelichte Borchers soll gleichfalls nach dem Absterben meiner Ehefrau Berrendje, geb. Paili die Farm nebst 160 Acker Land zugewiesen ~~erhalten~~ als ihren zweiten Erbentheil, worauf sie wohnt; doch da die Schenkung Ihner ist, soll sie gehalten sein ihren Brüdern $500.00 (fünfhundert Dollar beim Antritt auszuzahlen, d. h. im Ganzen $500, also an jeden ihrer Brüder $250.00.—

Diese Farm, welche ich meiner Tochter Fameke Gerds vermache, wird von ihr und ihrem Ehemann Ado Borchers zur einen Hälfte, und zur anderen Hälfte von mir und meiner Ehefrau bewohnt. Diese Farm hat mein Schwieger-

sohn von mir auf 8 Jahre gepachtet, und will ich ausdrücklich, daß dieser Contract ins Kraft bleiben soll, falls ich eher mit Tode abgehen sollte.
Sollten aber meine vorgedachte Tochter Fameke Gerds, verehelichte Borchers, ohne Kinder zu hinterlassen, mit Tode abgehen, so will ich hiedurch bestimmt festsetzen und verordnen, daß die Farm cum cum: an meine beiden verwaisten Söhne fallen soll, ohne daß mein Schwiegersohn mehr beanspruchen kann, als was ihm etwa die Gesetze dieses Landes zuspricht.
Meine 40 acre Holzland soll pr. Loos den 3 besagten Farmen zugetheilt werden, also daß meine Kinder jeder bei seinem Besitzthume 13 1/3 acre bekommt.
Sollten meine beiden Söhne, welche schon vorstehend erwähnt und welche in unserer Ehe gezeugt worden, die 160 Acre Land, welche ich von Willeke angekauft haben, und welche bei oder neben Heye Reints Land liegt zu 8, Acht Dollar an sich kaufen wollen, so soll es ihnen freistehen und genehmige ich hiedurch ausdrücklich diesen etwanigen Ankauf. Sie waren alsdann aber verpflichtet auf

Absterben meiner Ehefrau ihrer Schwester den ihr compatirenden Antheil auszuzahlen.

Was ich sonst noch an Ländereien, Ausstandsforderungen, Vieh, Mobilien und Vermögen besitze verbleibt meiner mehrgedachten Ehefrau zur freien unbeschränkten Verfügung und will ich nochmals zur Verhütung jeglichen Irrthums hiedurch und kraft meiner eigenhändigen Unterschrift nochmals bestimmen, daß meine oftgedachte Ehefrau Berendje geb. Panli, Zeit ihres Lebens, falls sie sich nicht verheirathen sollte, ungestört und nach ihrem Ermessen schaltend und waltend verbleiben soll.

Ihrem Wunsche gemäß, daß unser aufgenommener Sohn Heike Roelfs Ohling ihr als Assistenz beigestellt werden soll, genehmige ich nicht blos, sondern es ist auch dies mein letzter Willen und Beschluß.

Ich bitte, dieses mein Testament unangefochten zu lassen, weil es mein letzter Willen ist, den ich vorsätzlich und aus freien Stücken also zu testiren gegeben, welches ich, der Herr Doktor, Sondigen und beiden Zeugen, durch

52

ihre eigenhändigen Unterschriften der Wahrheit gemäß bezeugen.

Ridott, Stephenson County den 21. Aug. 1855, den ein und zwanzig August achtzehnhundert fünf und fünfzig.

(Siegel) R. K. Ohling

(Siegel) H. Reichenbach. M.D. als Zeuge der eigenhändigen Unterschrift.

(Siegel) D. Dirksen als Zeuge der eigenhändigen Unterschrift.

(Siegel) in Fi G. Dirksen als Zeuge der eigenhändigen Unterschrift.

in fidem

(Siegel) G. D. Blesene, Prediger, als Zeuge verstehender eigenhändigen Unterschriften und Schreiber vorstehenden Testaments.

State of Illinois }
Stephenson County } ss. I. Berentzi Ohling & Dirke Ohling do severally solemnly swear that the annexed writing contains the true last will & testament of the within named Roolf Kiins Ohling deceased so far as I know an believe and that I will well & truly execute the same by paying first the debts and then the legacies mentioned therein as far as his

goods & Chattels will thereunto extend, and the law charge me, and that I will make a true and perfect inventory of all such goods & Chattels, rights & credits as may come to my hands or knowledge belonging to the estate of the said deceased and render a final and just account of my administration when thereunto required by law, to the best of my knowledge and abilities, So help me God.

Subscribed & sworn to in open Court this 2d day of Oct. AD 1855. } Berentze Ohling
} H. R. Ohling

David A. Sunderland
Clerk

State of Illinois }
Stephenson County } ss We Derrecus Dirksen. G. Dirksen and G. D. Bleane being severally sworn according to law upon their several oaths, severally say that the paper writing hereto attached this day presented to the County Court of Stephenson County in said State by Berentze Ohling is the last will and testament of Rodolf K. Ohling late of Silver Creek in said County deceased, that the said last will and testament was made by the said deceased in his life time in said County, that is to say on the 21st day of August AD 1855. that at the time the same was made the said deceased was of sound mind and

54 memory, that the same was written by the above named G. D. Bleem and by the direction of the said deceased, that they saw the deceased sign the same with his own hand, and witnessed his signing the same by his request, and that they signed the said last will and testament as witnesses in the presence of the said Roolf K. Ohling and by his express request and then affiants further say that the said Roolf K. Ohling at the time he signed the same declared in their presence that the same was his last will and testament & further these affiants say not

Subscribed & sworn to before me this 2d day of Oct 1855

G. D. Bleem
Dirieus Dirksen
Gerriet Dirksen

David H. Sundelend
Clerk.

State of Illinois }
Stephenson County } ss

To the Honorable the County Court of Stephenson County in the State of Illinois

The undersigned Benentzi Ohling would respectfully represent to this Hon. Court that she is the widow of Rolf K. Ohling late of the Town of Green Creek in said County, deceased, that the said deceased departed this life on the 26th

56 day of August AD 1855. that before his death he made his last will and testament which is here now presented to this Honorable Court, and asks that the same be recorded and entered of Probate according to law. that the said deceased at the time of his death was possessed of personal estate of the value of four hundred & fifty dollars & a considerable amount of real estate. and she asks this Honorable Court, that letters of administration with the will annexed be granted by this Honorable Court to the undersigned

Berentz Ohling

State of Illinois }
Stephenson County } ss Berentzia Ohling being duly sworn says that the matters and things stated in the foregoing petition are just and true according to her best knowledge & belief.

Subscribed & sworn before me this 2d day of October 1855. David A. Sunderland

Clerk.

State of Illinois }
Stephenson County } ss Wilhelm Wiegmann and Cyrus A. Shutz being 1st duly sworn upon their oaths severally say that the paper writing hereto attached purporting to be the last will and testament of Rolf K. Ohling

deceased, and written in the German language has been by them translated from the German Language into the English language that the paper writing purporting to be the last will and testament of the said Rolf R. Ohling hereto attached is the translation of the said last will and testament into the English language, and that the said translation hereto attached is a true and just translation of the said last will and testament into the English language according to their best skill & knowledge & Belief. & further these affiants saith not.

Subscribed & sworn to before me this 2d day of October 1855.
David A. Sunderland Clerk.

William Wagner
Cyrus A. Shertz

Filed Oct 2d 1855 D.A. Sunderland Clerk

Papers of R. R. Ohling estate in Co. Ct. in evidence. Thinks receipt signature of Berentz Ohling (here receipt for $284.41 dated Aug 3/57 signed B. Ohling given in evidence, of which the following is a copy, viz:
Recd this 3d day of August AD 1857. of Sutzen Lutzius the sum of Two hundred and Eighty four & 41/100 dollars supply on note I hold

58

against him & this sum is this day endorsed on the note. August 3d 1857. B Ohling.

Col James Mitchell

Have a deed from the Master in Chancery for the lands. Putnam was interested in the lands same as I was. — (Deed from J. A Crain, Master, to Mitchell dated March 10th. 59 for land in evidence as follows, viz: This Indenture made this tenth day of March in the year of Our Lord One thousand Eight Hundred fifty nine. Between J. Addison Crain Master in Chancery in and for the County of Stephenson and State of Illinois of the first part, and James Mitchell of the County and State aforesaid of the second part. Witnesseth That whereas at the September Term of the Circuit Court in and for said County of Stephenson and State of Illinois AD 1857 said Court setting in Chancery, it was among other things, Ordered Adjudged and Decreed by the said Court in a certain Cause then pending in the said Court, Between James L. Neil complainant and Berentz Ohling executrix and Dirk R. Ohling administrator of Rodolf R. Ohling deceased Paul Ohling, Garnecke Gerds Berchen, Adds Berchen, surviving heirs of Rodolf R. Ohling deceased, Defendants, that the Mortgaged

5-9

premises in the said Complainants Bill of Complaint hereinafter particularly described be sold by the Master in Chancery for said County of Stephenson at public auction, the said Master first giving four weeks notice of the time and place of such sale, in one of the Public Newspapers printed in the City of Freeport in said County of Stephenson, And whereas Lemuel A. Hibbard the acting Master in Chancery for the time being in pursuance of said order and decree of said Court did on the fifth day of December A.D. 1857 sell at public auction, at the door of the Court house in Freeport in said Stephenson County the said mortgaged premises in part hereinafter particularly described having first given four weeks previous notice of the time and place of sale, with a brief description of the premises agreeable to the order, and decree aforesaid, at which sale the whole of said mortgaged premises were sold (each tract having by said Master been offered seperately and then being no bid for the same) to the said Complainant James L. Neale for the sum of three thousand two hundred and eleven dollars and seventy four cents, that being the higher and best bid for the said lands and premises to wit:

60 the south half of section number twenty in Township number Twenty six North Range number nine, East of the fourth principal Meridian Containing three hundred and twenty acres more or less, and also the south east quarter of Section number Twenty five in Township number Twenty six Range Eight East of the said fourth principal meridian containing one hundred and sixty acres more or less all of said lands being situated and lying in said County of Stephenson and State of Illinois, the said lands being sold by the terms of said decree. Subject to the equity of redemption therein. Doth said defendants or any of them should have the right to redeem said lands from said sale for the space of twelve months from the day of sale, and that Judgment creditors for fifteen months from said day of sale, and that in case no such redemption was made within the space of time aforesaid, then and in that case, the Master in Chancery at such time acting, should make, execute and deliver to the purchaser at such sale, or his assignee or assignees a deed for the same according to law, the said master being ordered by said decree to make a certificate of purchase to the

purchaser aforesaid, all of which more fully appears of the records and files of said Court, in the office of the Circuit Clerk of said County of Stephenson, and whereas said premises have not been redeemed according to law, to the terms of said decree by any of the parties entitled to redeem as aforesaid, and the said period of fifteen months from said day of sale having elapsed, and the said James L. Neil having assigned his certificate of purchase to James Mitchell who having produced the said I. Addison Crain Master in Chancery as first aforesaid, the said certificate of purchase for the tracts of land and being now entitled, to a conveyance therefore, by the terms of said decree notice and sale, Now therefore this Indenture Witnesseth that the said I. Addison Crain Master in Chancery as aforesaid and party of the first part to these presents, in order to carry into effect the said sale so made as aforesaid in pursuance of the said decree of said Court of Chancery, and in consideration of the premises and of the said sum

of three thousand two hundred and eleven dollars. twenty four cents paid to the said Homer N. Hibbard Master in Chancery as aforesaid at the day of said sale. and the execution and delivery of said certificate of purchase by the said James Mitchell party of the second part and of the sum of five dollars. to the party of the first part paid the receipt whereof he does hereby acknowledge hath granted, bargained and sold. Conveyed and Confirmed. and doth hereby grant bargain sell convey and confirm. unto the said party of the second part and to his heirs and assigns forever. all the aforesaid tracts or parcels of land situated and lying in the County Stephenson and State of Illinois to wit. the South half of Section number Twenty in township Number twenty six (26) North of Range Number Nine East of the fourth principal Meridian Containing three hundred and twenty acres more or less. Also the South east quarter of Section number twenty five in township Number twenty six Range Eight East of the said fourth principal Meridian Containing

one hundred and sixty acres more or less. together with all and singular the appurtenances thereunto belonging or in any wise appertaining. To have and to hold all and singular said premises above mentioned and described and hereby granted and conveyed with their appurtenances unto the said party of the second part his heirs and assigns their only proper use and behoof forever In witness whereof said I. Addison Crain Master in Chancery as aforesaid has hereunto set his hand and seal the year and day first above written

I. Addison Crain (Seal)
Master in Chancery
Stephenson Co. Ills.

State of Illinois }
Stephenson County } ss I. Homer N. Hibbard a Notary Public in and for the City of Freeport County of Stephenson and State aforesaid do hereby certify that I. Addison Crain Master in Chancery in and for said County is personally known to me to be the person whose name is subscribed to the foregoing deed as having executed the same. appeared

64 before me this day in person and acknowledged that he signed sealed and delivered the same as his free and voluntary act for the uses and purposes therein set forth. Given under my hand and seal Notarial this 11th day of March AD 1859

(Seal) Hiram A. Gibbard
Notary Public

Recorded March 11th 1859 at 4.40 o'clock P. M. L. W. Gintner Clk

Deeds to Lutzius & Reibles from Mitchell in evidence, conveying the lands - 100 acres to one & 60 acres to other - No recollection of hearing Ohling say they had notes from Lutzius

Cross Examined

We got the certificates of purchas for the land from Jas. L. Neil & gave the money to him. No arrangement with the Ohlings at the time we got. Neil bought the certificates himself in person. Presume Neil indorsed the certificates. Don't remember of John B. Johnson ever having any thing to do with it. think offered to deed if any body would pay. Don't recollect of ever seeing Compt Prepared the deed in whole or in part

Our offers were made after we took the certificate, Mitchell told the parties if they would pay their proportion, they would deed them their proportions. These offers were made after they got the Certificate.

Erastus Sorry

I am a J. Peace. I took the acknowledgement of the deed. If I recollect part of the parties signed deed in Freeport, & I went to their houses for pay. Some money paid and some notes at the time, Can't tell how much notes & how much money, Can't tell amount of notes, Should think $1000 paid in money & balance paid in notes. Money & notes given before deed acknowledged. Was present when money paid & notes given.

Said deed from Berentza Ohling et al to Lutzen Lutzens given in evidence. Papers in a suit at law offered and given in evidence. Papers in foreclosure suit by James L. Neil ~~off~~ Br Ohling et al offered and given in evidence. Decree and all the orders in the case given in evidence. Book "F" Circuit Court record page 344 & all the orders in the case of James L. Neil vs Berentza Ohling et al given in evidence. Receipt for $284.49/100

offered & given in evidence from B. Ohling to Lutzin Lutzin. date Aug 3d 1857. as follows viz:

Know all men by these Presents that Berentzie Ohling. Heike R. Ohling and his wife Mechettie, Paul Ohling and his wife Tetje Addo Berches and his wife Janeke. widow and heirs at law of Rolf R. Ohling deceased County of Stephenson and State of Illinois party of the first part in consideration of Two thousand two hundred and fifty dollars to them in hand paid by Lutzin Lutzins of County Stephenson and State of Illinois party of the second part. the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed. and do hereby grant. bargain, sell. convey and confirm to the said party of the second part and to his heirs and assigns forever the following described tract or parcel of land situated in Stephenson County and State of Illinois viz: The south east quarter of section twenty five (25) in Township Twenty six (26) North of Range Eight. East in the District of lands subject to sale at Dixon Illinois containing One hundred and sixty acres. With the hereditaments and appurtenances thereunto belonging or in any wise appertaining. To have and to hold

said premises above described to the said party of the second part his heirs and assigns forever. and the said party of the first part for themselves and their heirs, executors and administrators do covenant to and with the said party of the second part his heirs and assigns that he is lawfully seized in fee simple of the said above described premises. that the aforesaid premises are free from all incumbrances. and that said party of the first part. will, and their heirs, executors and administrators shall warrant and defend said premises to the said party of the second part his heirs and assigns, against the lawful claims and demands of all persons whomsoever, And Mechetje. Ritje and Janette wifes of the said Dirk R. Ohling Paul Ohling. Addo Borchers in consideration of the payment made as aforesaid do hereby release to said party of the second part. their heirs and assigns forever all their right of dower in the above described premises

In testimonies whereof said granters have hereunto subscribed their hands and seal at Freeport this fourth day

of December AD 185

Berentje Ohling (Seal) Dirke R. Ohling (Seal)
Addo Berchen (Seal) Dechettje H. Ohling (Seal)
Janeke Berchen (Seal) Paul I. Ohling (Seal)
Tettje Ohling (Seal)

Executed in presence of }
E. Torry }

State of Illinois } I. Erastus Torry Justice of
Stephenson County } ss the Peace in and for said County do hereby certify. that Berentje Ohling, Dirke Ohling, & wife Mehalla, Paul Ohling & wife Tyne, Addo Berchen & wife Janeke personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed and delivered the same as their free and voluntary act and deed for the uses and purposes therein set forth. and the said Mehalla Ohling, Tye Ohling, Janeke Berchen, personally known to me to be the wife of the said Dirke Ohling. Paul Ohling & Addo Berchen. and as the persons who ~~[illegible]~~ subscribed said deed as such having been by me made acquainted with the contents and meaning of said instrument of writing and examined

separate and apart from her husband acknowledged that she had executed the same and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely and without compulsion from her husband and that she does not wish to retract the same. Given under my hand and seal at this tenth day of December AD 1855

Erastus Perry [seal]

Recorded September 2. 1857 at 4 1/4 P.M.

26. 97

State of Illinois } ss In the Circuit Court of
Stephenson County } Stephenson County of the April
Term AD 1857.

To the Honorable Benjamin R. Shelden presiding Judge of the fourteenth Judicial Circuit in the County of Stephenson in the State of Illinois. In Chancery.

Your Orator James L. Neil a resident of the County of Stephenson and State of Illinois showeth unto your honor that on or about the Eighth day August in the year of Our Lord One thousand Eight Hundred and fifty four Rudolf R. Ohling of the County of Stephenson and State of Illinois was the owner and

seized in fee simple of the lands and premises herein after mentioned and set forth lying and being in Stephenson County in the State of Illinois. Your orator would further show unto your Honor that on the said Eighth day of November AD 1854 the said Rolf K. Ohling by his two certain promissory notes in writing duly made and executed, became and was justly indebted unto Thomas K. Milliken in the just and full sum of twenty five hundred dollars. one thousand dollars thereof to be paid on the first day of October AD 1855 after the date of one of said notes of one thousand dollars with interest at the rate of ten per cent which said promissory note is in the words and figures following viz:

"$1000 Freeport August 8th 1854 On the first of October 1855 after date for value received I promise to pay to the order of Thomas K Milliken one thousand dollars with interest at ten per cent R. K. Ohling"

and fifteen hundred dollars to be paid on the first day of October AD 1856 after the date of the other of said notes of fifteen hundred dollars with interest at five per cent. which said promissory note is in the words and figures following viz:

"$1500 Freeport August 8th 1854. On the first day

of October 1856 after date for value received I promise to pay to the order of Thomas R. Milliken fifteen hundred dollars with interest at five per cent. R.K. Ohling"

And then and there delivered said promissory note above mentioned unto the said Thomas R Milliken who then and there transfered and assigned said notes to your orator, by an indorsement on the backs thereof as follows viz. "For value received I assign the within note to James L. Nil or order. Thomas R Milliken

Thos. R Milliken "

which said note is now in the custody of your orator and ready to be produced as this Honorable Court shall direct, and for greater certainty your orator begs leave to refer to the same when necessary. Your orator further shews unto your Honor that the said Rolf K. Ohling in order to more fully secure the principal sum of money with the interest therein mentioned in manner aforesaid in and by a certain deed of mortgage bearing date the same day and year aforesaid and also in consideration of four thousand dollars to him in hand paid by the said Thomas R Milliken at and before the unsealing and delivery of said deed or indenture of mortgage did grant bargain and sell, convey and

conform unto the said Thomas R. Milliken his heirs and assigns, which said deed of mortgage was signed with his hand and sealed with his seal and acknowledged and recorded in due form of law, the date whereof is the day and year aforesaid for and in consideration of the sum of four thousand dollars did convey and assign unto the said Thomas R. Milliken of Stephenson County Illinois his heirs, executors, administrators and assigns, the following pieces or parcels of land to wit: situated and being in the County of Stephenson and State of Illinois and known and described as follows to wit: The South half of Section Number Twenty (20) in Township number Twenty six (26) of Range Number Nine East of the fourth principal meridian, containing three hundred and twenty acres more or less, also the South east quarter of Section number twenty five (25) in Township Number Twenty six (26) of Range Number Eight (8) East of the fourth principal meridian containing one hundred and sixty acres more or less, together with all and singular thereunto belonging or in anywise appertaining thereto. To have and to hold the above described premises unto the said Thomas R. Milliken his heirs and assigns forever

with a proviso therein contained that if the said Rolf K. Ohling his heirs, executors, administrators or assigns shall well and truly pay or cause to be paid unto the said Thomas R. Milliken his heirs, executors, administrators or assigns the just and full sum of four thousand dollars according to the ~~three~~ terms of three notes described in said mortgage, two of which said notes are herein before set forth, and the other note of fifteen hundred is merged in a Judgment in the Circuit Court of Stephenson County, Illinois in favor of Thomas R. Milliken and to be paid in due course of administration of the estate of Rolf K Ohling deceased, then this deed of Mortgage to be void and of no effect otherwise to remain in full force and virtue Your orator would further show unto your Honor that after the execution delivery and recording of said deed of mortgage aforesaid to secure the payment of said promissory notes aforesaid, Thomas R Milliken did indorse the said promissory notes herein before set forth to your orator herein and then and there delivered said notes to your orator, so endorsed and assigned as aforesaid and the said Thomas R. Milliken then and then at the time of indorsing and assigning said promissory notes he assigned his

interest in the said mortgage to the two notes above recited to James L. Neil
Your Orator further showeth unto your Honor, that the aforesaid sum of money in the two notes herein before mentioned & being a part of the consideration of said mortgage deed was not paid at the time therein mentioned, nor has the same nor any part thereof since been paid but the same or the said two notes are now due and wholly unpaid with the interest of the rate of ten per cent. per annum due and wholly unpaid.
Your orator further shows unto your Honor, that by the terms of said mortgage deed and the note therein described the last installment has become due and is now unpaid. Your orator further showeth unto your Honor that the said Rolf K Ohling since the execution of the aforesaid note and mortgage deed on or about the 26th day of August AD 1855. in the County of Stephenson and State of Illinois departed this life leaving as his heirs Berentje Ohling his widow and executrix of the last will and testament of the said Rolf K. Ohling, and Hicke Roolf Ohling who is administrator

45

with the will annexed of the estate of the said Roolf K. Ohling deceased, Paul Janssen Ohling. Jametta Gusta Ohling, lately intermarried to Addo Birches and Addo Birches whome your orator prays may be made defendants to this his Bill,

Your orator further showeth unto Your Honor, that the said defendants utterly neglected and refused to pay the said notes, herein inserted and the interest thereon now due, and owing unto your orator notwithstanding the repeated requests made by your orator for payment of the same,

Your orator would further show unto Your Honor, that at the time of the execution of the notes and mortgage and ever since the said Roolf K. Ohling and his surviving heirs as aforesaid has by him or themselves and tenents been in the possession of said land, grounds and premises and have derived all the advantage benifit and profit therefrom, And your orator will hoped that the said defendants would have paid and satisfied said note and the interest thereon so your orator

could have satisfied and released his interest in said mortgaged premises, and every part thereof unto the said defendants their heirs and assigns
To the end therefore that the said defendants may if they can, shew cause why your orator may not have the relief herein prayed for, and may upon their corporal oaths, and according to the best and utmost of their information and belief full true and perfect answers make to all and singular the matters and things contained in your orators Bill of complaint and particularly that they answer and state if Rolf R. Ohling in his life time did not make and execute the mortgage and notes herein above named, and a copy of which mortgage and notes is hereto attached and made a part of this Bill of complaint marked Exhibit "A" and that they set forth and answer if any part of said notes so indorsed as aforesaid by your orator or their interest thereon has been paid and if the same is not now due and wholly unpaid by our orator.
Your orator prays that an account may be taken of what is due

your orator upon said mortgage and
notes, and that the defendants may
be decreed to pay the same to your
orator by some short day to be appo-
inted by your orator, together with
your orators costs, and in default
thereof that the said defendants,
and all persons claiming under them
may be foreclosed of all right, title
interest and equity of redemption in
and to said mortgaged premises, and
that said premises may be sold to satis-
fy the claims and demand of your orator
together with the costs in this his suit.
And that your orator shall have general
such other and further relief in the
premises as the nature of the case
may demand, and Courts of equity can
grant.
Your orator would further pray your
Honor to grant unto your orator the
People's writ of subpoena (summons in
Chancery) to be issued out of and
under the seal of this Honorable Court
to be directed to the said Berentje Ohling
executrix, Dirk Rolf Ohling administrator
of the estate of Roolf R. Ohling deceased
Paul Janssen Ohling, James Herd

Borchers, and Addo Borchers surviving heirs of Rudolf R. Ohling deceased defendants herein. Commanding them on a certain day to be therein inserted and under a certain penalty then inserted to appear before your Honor in the Circuit Court of Stephenson County Illinois, held at Freeport and then and there answer the premises and abide the order and decree of your Honorable Court therein, and your orator as in duty bound will ever pray &c

A. Bright Solr
J. Bright Smith of Counsel } James L. Neil

Exhibit "A"

$1000 Freeport August 8th 1854

On the first of October 1855 after date for value received I promise to pay to the order of Thomas R. Milliken One thousand Dollars with interest at ten per cent (endorsement on said note) R. R. Ohling

For value received I assign the within note to James L. Neil or order, Thomas R. Milliken,

$1500 Freeport August 8th 1854

On the first day of October 1856 after date for value received I promise to pay to the order

of Thomas R. Milliken. Fifteen Hundred dollars with interest at five per cent

R. K. Ohling

(endorsement on said note)

For value received I assign the within note to James L. Neil or order Thos. R. Milliken

This Indenture made this Eighth day of August in the year of Our Lord One thousand Eight hundred and fifty four. Between Roolf K. Ohling of the County of Stephenson and State of Illinois of the first part. and Thomas R. Milliken of the County and State aforesaid of the second part witnesseth That the said party of the first part for and in consideration of the sum of Four thousand dollars Ohlin in hand paid the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and does hereby grant, bargain sell, convey and confirm, unto said party of the second part and this heirs and assigns forever all that tract or parcel of land situate and being in the County of Stephenson and State of Illinois and known and described as follows viz: The South half of Section number twenty (20) in Township twenty six (26) Range nine (9) east of the fourth principal meridian containing three hundred and twenty acres more or less. Also the South east quarter of Section

number Twenty five (25) in Township Twenty six (26) Range Eight (8) East of the fourth principal meridian, containing One hundred and Sixty acres more or less. Together with all and singular the appurtenances thereunto belonging or in any wise appertaining. To have and to hold the above described premises unto the said party of the second part, and to his heirs and assigns forever, And the said party of the first for himself and his heirs, executors and administrators do covenant and agree to and the said party of the second part his heirs and assigns, that he is well seized of the premises above conveyed as of a good and indefeasible inheritance in the law in fee simple, and that the said premises are clear of all incumbrances whatsoever, And the said party of the first part the aforesaid premises unto the said party of the second part and his heirs and assigns against the claim or claims of all and every person whomsoever does and will warrant and forever defend by these presents, Provided always that if the said party of the first part or his heirs, Executors, or administrators shall well and truly pay or cause to be paid to said Thomas R. Milliken his executors, administrators or assigns the just and full sum of four thousand dollars with interest according to the tenor and

effect of three notes signed by said Roolf K. Ohling payable to said Thomas R. Milliken or order, to wit: one note for fifteen hundred dollars due on the first of October next after date with ten per cent interest, also one note for one thousand dollars due on the first day of October A.D. 1855 with interest at the rate of ten per cent, also one note for fifteen hundred dollars due one the first Day of October A.D. 1856 with five per cent interest, then these presents shall be null and void, any thing herein contained to the contrary notwithstanding - This mortgage is given to secure the payment of the purchase money for the above described tracts of land. In witness whereof the said party of the first part hath hereunto set his hand and seal on the day and year first above written

Signed sealed and delivered } R. K. Ohling (Seal)
in presence of

State of Illinois }
County of Stephenson } ss I. Joseph B. Smith Clerk of the Circuit Court in and for said County ~~the~~ ~~aforesaid~~ certify that Roolf K. Ohling personally known to me to be the person whose name is subscribed to the foregoing deed as having executed the same appeared before me

this day in person, and acknowledged that he signed sealed and delivered the same as his free and voluntary act, and for the uses and purposes therein set forth Given under my hand and official seal at Freeport this Eighth day of August AD 1854 Joseph B. Smith Clerk

State of Illinois }
County of Stephenson } ss Office of Clerk of Circuit Court. I certify that this deed was filed for record in my office on the fourth day of October AD 1854 at 12 o'clock M. Recorded in Book "G" of Mortgage deeds, Page 373 and examined. Joseph B Smith Clerk
by N. R. Ordway Dep.

(Endorsement on said Mortgage)
For value received I assign my interest in the within mortgage to the note of one thousand dollars due October the first 1855. and the note of fifteen hundred dollars due the first of October 1856 to James L. Hill
James R Milliken (Seal)

Filed Feb. 20, 1857
L. H. Guiteau Clk.

State of Illinois }
Stephenson County } ss In the Circuit Court of Stephenson County of the April term AD 1857

89

James L. Neil

vs

Berendje Ohling Executrix
Aike Roolf Ohling Administrator
of the estate of Roolf K. Ohling deceased
Paul Jansen Ohling Jamke
Gerds Borchers, Addo Borchers
surviving heirs of Roolf K.
Ohling deceased

Upon filing the accompanying Bill, the Clerk of the Court will please issue a summons in Chancery in the above cause returnable according to law.

Bright & Smith
Compt Sols —

To L. H. Guiteau Clerk &c
February 20th 1857.

Filed Feb 20. 1857

L. H. Guiteau Clk

State of Illinois }
Stephenson County } ss

The People of the State of Illinois to the Sheriff of said County — Greeting:

We command you, that you summon Berentje Ohling, Executrix, Aike Roolf Ohling Administrator of Roolf K. Ohling deceased, Paul Jansen Ohling, Jamke Gerds Borchers, Addo Borchers surviving heirs of Roolf K Ohling deceased if they shall be found in

your County. personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in Freeport in said County on the first monday of April next to answer unto James L. Neil upon a Bill filed in said Court on the Chancery side thereof to foreclose a mortgage. And have you then and there this writ with an endorsement thereon in what manner you have executed the same.

Witness. Luther H. Guiteau Clerk of our said Court. and the seal thereof at Freeport this 20th day of February AD 1857

L. H. Guiteau Clerk

Filed Feb. 20. 1857.

L. H. Guiteau Clerk

Served this writ on the within named Berentze Ohling. Aeyke R. Ohling. Paul L. Ohling. Garmake G. Berchen & Addo Berchen by delivering a copy thereof to them this 18th day of March 1857. Wilson Shaffer Sheriff –

And afterwards to wit: of the 13th day of April AD 1857. the same being one of the days of the April term AD 1857 of said Court. the following appears of record in said cause. viz:

James L. Neil

vs

Berentzi Ohling Executrix. and Dicke Roolf Ohling Administrator of Roolf K Ohling deceased. Paul Jansen Ohling, Germek Gerds Borchers. surviving heirs of Roolf K Ohling deceased

And now on this day comes the said Plaintiff by his attorneys and moves the Court that the defendants be ruled to plead. Whereupon the Court being fully advised in the premises it is ordered by the Court that the defendants plead by the incoming of Court tomorrow morning. (E. 499)

And afterwards to wit of the 18th day of April AD1857. the same being one of the days of the April term AD1857 of said Court ~~there appear of~~ the following appears of record in said cause viz:

James L. Neil

vs

Berentzi Ohling Exr & Dicke Roolf Ohling admr of Roolf K. Ohling deceased & others } Bill to foreclose mortgage

On motion of the said Complainant by his solicitor it is ordered by the Court

that the Defendants be and they are ruled to answer the Complainants Bill of Complaint by Monday Morning next.

And afterwards to wit of the 20th day of April AD1857 the same being one of the days of the April Term AD1857. of said Court, the following appears of record in said Cause viz:

James L. Neil
vs
Berentzi Ohling Executrix
Ducke Roolf Ohling administrator
of Roolf K. Ohling decd & others

} Bill in Chancery to foreclose mortgage

And now on this day comes the said defendants by their solicitor and file their answer to Complainants Bill of Complaint herein.

Berentzi Ohling
vs
James L. Neil

} In chancery
} The answer of Berentzi Ohling to the Bill of James L. Neil.

And now on this day comes the said Deft. by Meacham her atty. and says that she has paid the whole sum mentioned in the Bill in this Cause and the same is fully discharged and paid. Berentzi Ohling by W D Meacham her solicitor

W D Meacham
Solicitor

87

Filed April 20. 1857

L. W. Guiteau Clk.

And afterwards Viz't of the 21st day of April AD 1857 the same being one of the days of the April Term AD 1857 of said Court the following appears of record in said cause viz:

James L. Neil vs Berentje Ohling Extx & Dirk Roolf Ohling Admtr of the Estate of Roolf K Ohling deceased & others	Bill to foreclose Mortgage

And now on this day comes the complainant by his solicitor and files his exceptions to the answer of Berentje Ohling in this cause (566)

State of Illinois Stephenson Cnty	vs In the Circuit Court of Stephenson Cnty of the April Term AD 1857.

James L. Neil vs Berentje Ohling Et al.	No 40 Chancery

Exceptions taken by the complainant to the insufficient answer

88

of the Defendant Berentzi Ohling
1st That the Defendant has not answered and set forth under her oath as to the payment of any part of said Mortgage or notes, or whether it was executed as in said Bill mentioned.
2d That the said Defendant has not answered the Complainants Bill under oath
3d That it is no definite answer to the Bill of Complaint. In all which particulars the said Complainant insists that the said answer of the said Defendant is evasive, imperfect and insufficient wherefore he excepts thereto and prays that the said Defendants may be compelled to answer the same and put in full and sufficient answer to the said Bill

Bright & Smith
Compt Solrs

Filed April 21. 1857
L. W. Guiteau Clk.

And afterwards to wit of the 23d day of April AD 1857 the same being one of the days of the April term AD 1857 the following appears of record in said Cause viz:

James L. Neil
vs
Berentze Ohling Executrix &
Dirke Roolf Ohling Admr of
Roolf K. Ohling decd Paul
Jansen Ohling. Garmek
Gerds Berchus Addo Berchus
surviving heirs of Roolf K Ohling decd } Bill in Chancery to foreclose Mortgage

On Motion of H. D. Meacham Solicitor for Defendant Berentzi Ohling Extx It is ordered by the Court that the Complainants exceptions to Defendants answer be refered to the master in Chancery

E 1582

And afterwards Dwit of the 25th day of April AD 1857 the same being one of the days of the April term AD 1857 of said Court the following appears of record in said cause viz.

James L. Neil
vs
Berentzi Ohling Executrix &
Dirke Roolf Ohling administrator
of the Estate of Roolf K. Ohling
deceased. Paul Jansen Ohling
Garmek Gerds Berchus Addo
Berchus surviving heirs of
Roolf K. Ohling deceased } Bill to foreclose Mortgage in Chancery

And now on this day comes H. N. Gibbord Master in Chancery and files his report upon the exceptions taken by the Complainant to the answer of Defendant Berentzi Ohling Et al. and on motion of the Complainant by his solicitor it is ordered by the Court that the report be confirmed. And by the agreement of the parties it is further ordered by the Court that all of the Defendants file their answers to the complainants Bill of Complaint by the 10th day of June next.

C. 592

State of Illinois } In the Circuit Court of
Stephenson County } ss. Stephenson County of the April
Term AD 1857 –

James L. Neil
vs
Berentzi Ohling et al } In Chancery

To the Honorable Benjamin R. Sheldon Judge of the fourteenth Judicial Circuit of the State of Illinois &c

In pursuance of an order of this Court made in the above entitled cause on the twenty third day of April AD 1857 whereby it was refered to the subscriber master in Chancery of this Court to look into the

complainants Bill of Complaint. the answer of the said Defendant Berentzi Ohling and the exceptions taken to said answer by said Complainant and report whether said exceptions were well taken or not I the said Master do hereby respectfully certify and report that having been attended by the Counsel of the respective parties and, having looked into said Bill and answer and the exceptions taken thereto, and having duly considered the same. I find that all the exceptions to said answer are well taken. All which is respectfully submited

A. N. Hibbard
Master in Chancery

Filed April 25. 1857
L. H. Guiteau Clk.

And afterwards to wit: of the 11th day of September AD1857. the same being one of the days of the September Term AD1857 of said Court the following appears of record in said cause viz:

James L. Neil
vs
Berentzi Ohling Ex^tr, Rolf Ohling
Roolf Ohling admr of } Bill to foreclose

Roolf K. Ohling deceased
Paul Lansen Ohling Germes
Gerds Berchus. Addo Berchus
Surviving heirs of Roolf K. Ohling deceased } mortgage

On motion of the said Complainant by his solicitor. the said Defendants being three times solemnly called, came not but made default. It is thereupon considered and ordered by the Court that the Complainants Bill be taken as confessed and that the same be refered to the master in Chancery to take proofs.

And afterwards to wit: of the 22d day of September AD1857 the same being one of the days of the September term AD1857 of said Court. the following appears of record in said cause viz:

James L. Neil
vs
Berentzi Ohling Executrix
& Dirk Ohling Administrator
of the Estate of Roolf K. Ohling
deceased & Paul Lansen Ohling
Germes. Gerds Berchus. Addo
Berchus surviving heirs of
Roolf K. Ohling deceased } In Chancery

And now at this day came

A. N. Dibbard Master and files his report herein. It is thereupon considered and ordered by the Court that the same be confirmed.

State of Illinois } ss In the Stephenson County Circuit
Stephenson County } Court. December Term 1857

James L. Neil
vs
Berentze Ohling Executrix & Dirke Ohling administrator of the Estate of Roolf K. Ohling deceased and Paul Sanssen Ohling. Germeke Gerds Berchen. Addo Berchen surviving heirs of Roolf. R. Ohling deceased } In Chancery

To the Honorable Benjamin R. Melder presiding Judge of the fourteenth Judicial Circuit of said State in Chancery setting. In pursuance of an order of this Court made in the above cause on the 11th day of September AD 1857 by which it was referred to the master in Chancery in and for said County of Stephenson to compute ascertain and report the amount due the complainants for principal and interest on the notes and mortgage mentioned in his Bill filed in this Cause. I the subscriber Master in Chancery of this Court do respectfully certify and report

that I have computed and ascertained the amount due to the Complainant in this cause as aforesaid. and that the amount so due on the said notes and mortgage for the principal and interest up to and including the date of this report is the sum of three thousand forty six dollars and Eighty Eight cents And I do further certify and report that the Schedule hereunto annexed marked A. and making a part of this report contains a statement and account of the principal and interest moneys due to the Complainant as aforesaid, the period of the computation of the interest and its rate and to which for greater certainty I refer all of which is respectfully submitted

Dated September 22d 1857. H. N. Hebbard
Master in Chancery

Schedule "A" referred to in the preceding report. One note dated August 8. 1854 for the sum of $1000 payable to order of Thomas R. Milliken & by him indorsed to James L. Nice

Principal now due	$1000
Interest thereon from Aug 8. 1854 to September 22. 1857 being three years and one month & fifteen days at ten per cent	312. 50

one note dated August 8, 1854 for the sum of $1500 payable to order of thomas R. Milliken & by him endorsed to James L. Neil 1500
Principal sum now due 1500
Interest thereon from date to Sept 22 1857 being 3 years 1 month & 15 days 234.38
at ten per cent
Amt due Complt this 22 Sept 1857 $3046.88

H. N. Hebbard
Master in Chancery

Filed September 22nd 1857
L. N. Guiteau Clk.

In the Circuit Court of Stephenson County
In chancery

James L. Neil
vs
Berentze Ohling Executrix and Dicke Roolf Ohling Administrator of Roolf K. Ohling deceased Paul Janssen Ohling, Garmeke Gerds Berchus, Addo Berchus surviving heirs of Roolf K. Ohling deceased

Bill to foreclose Mortgage

This cause having this day been brought on to be heard upon the Bill of Complaint filed herein and taken as confessed by the said Defendants

and upon the report of A. N. Dibbard the master of this Court in and for the County of Stephenson and State of Illinois. which said report bears date the twenty second day of September AD 1857. and was made in pursuance of an order of this Court heretofore made in this cause referring it to the master of this Court to compute the amount due to the Complainant on the mortgage and promissory notes mentioned and set forth in said Bill of Complaint. on reading and filing said report from which it appears that there was due to the said complainant at the date of said report for said principal and interest the sum of three thousand and forty six dollars and Eighty Eight cents ($3046.88) And on motion of L. Bright Smith the Counsel for said Complainant. it is ordered, adjudged and decreed, and the said Court by virtue of the authority vested therein, doth order, adjudge and decree. that the said report and all things therein contained do stand ratified and confirmed. And it is further ordered and decreed. that the said Defendants pay the said principal sum and interest thereon within twenty days after the date of this decree to the said Complainants

or to his said solicitor. And it is further ordered adjudged and decreed that in default of such payment being made as aforesaid that all and singular the said mortgaged premises mentioned in the Bill of Complaint in this cause and hereinafter described, or so much thereof as may be necessary to raise the amount due to the complainant for the principal and interest and costs in this cause be sold at public auction by and under the direction of the master of this Court. that the said sale be made at the door of the Court House in said said County in the City of Freeport. that the said master shall give public notice of the time and place of said sale by publishing the same four weeks successively in one of the weekly newspapers published in said City of Freeport and that the Complainant in this cause may become a purchaser, and that the master shall execute to the purchaser or purchasers a certificate of purchase for said mortgaged premises, which certificate shall be in writing and shall describe the land sold and the amount paid for the same. and in case the complainants shall be the purchaser, the said certificate shall specify the amount of his bid. and in case the said mortgaged

premises so sold as aforesaid shall not be redeemed according to law, then it is further ordered and decreed that the master of this Court shall execute a deed to the purchaser or purchasers of the said mortgaged premises or so much thereof as shall have been sold as aforesaid,
And that the said Master out of the proceeds of shall retain his disbursements, fees and commissions on said sale, and pay to the Complainant or his said Solicitor out of said proceeds his Costs in this suit expended and also the amount so reported due as aforesaid, together with legal interest thereon, from the date of said report, or so much thereof as the purchase money of said mortgaged premises will pay of the same, And that the said Master shall take receipts for the amt. so paid and file the same with his report, and that he bring the surplus monies arising from said sale, if any there be into Court without delay to abide the order of this Court. And it is further ordered adjudged and decreed that the said Defendants their heirs and personal representatives be forever barred and foreclosed of and from all equity of redemption and claim of in and to said

said mortgaged premises and every part and parcel thereof from and after one year from the date of the sale by the Master of this Court as aforesaid, And it is further ordered and decreed that the purchaser or purchasers of said mortgaged premises from and after the expiration of fifteen months from the sale aforesaid be let into possession of the said mortgaged premises, and that the Defendants or any person or persons who may be in possession of said premises or any part thereof and who may have come into the possession of the same or any part thereof under the said Defendants, or either of them since the commencement of this suit, release possession thereof to the purchaser or purchasers thereof on the production of the masters deed for such premises. The description of the property authorized to be sold under and by virtue of this decree so far as the same can be ascertained from the said mortgage above refered to or from the Bill of Complaint in this Cause, are as follows. to wit: The South half of Section number twenty (20) in Township number twenty six (26), Range number nine (9) East of the fourth principal

100 meridian. Containing three hundred and twenty acres more or less. Also the South East quarter of Section number twenty five (25) in Township twenty six (26) Range Eight (8) East of the fourth principal meridian containing One hundred & sixty acres, situate in the County of Stephenson and State of Illinois

Benj. R. Shelden

Filed Sept. 22nd. 1857. F. 98

L. W. Gutteau Clk.

State of Illinois

In the Circuit Court of Stephenson County. In Chancery

James L. Neil

vs

Berenja Ohling Executrix and Dirke Roolf Ohling admr of Roolf K Ohling deceased. Paul Jansen Ohling Germek Gerds Berches and Adde Berches surviving heirs of Roolf K. Ohling deceased

} Bill to foreclose Mortgage

In pursuance of a Decretal order of the Circuit Court of Stephenson County Illinois sitting in Chancery, made and entered in the above entitled cause at the September term 1857. there will be

sold (subject to the equity of redemption) to the highest bidder for cash by the subscriber, a Master in Chancery at the door of the Court House in the City of Freeport in said County on the fifth day of December 1857. between the hours of 9 o'clock A.M. and 4 o'clock P.M. upon a foreclosure of a mortgage bearing date the 8th day of August 18 4 executed by Rudolf K. Ohling to Thomas R. Milliken and duly assigned by the said Thomas R. Milliken to the said James L. Neil, the following described real estate, or so much thereof as shall be sufficient to pay the amount due upon said mortgage for principal and interest, together with costs of foreclosure, viz: The South half of Section number twenty in township number twenty six, Range number nine, East of the fourth principal meridian, containing three hundred and twenty acres more or less, and also the South east quarter of Section number twenty five in township number twenty six, Range Eight, East of the fourth principal meridian, containing one hundred and sixty acres more or less situate in the County of Stephenson and State of Illinois aforesaid

H. A. Dibbard Master in Chancery
J. Bright Smith Solr
Freeport Nov. 6th 1857.

J. W. T. Giles one of the Publishers of the Freeport Weekly Bulletin a Newspaper published in the City of Freeport Stephenson County Illinois. do hereby certify that the affixed Decretal order notice has been published for four successive weeks: the first insertion being on the 12th day of November AD1857. and the last on the 3d day of December AD1857. for which we charge seven dollars

W. T. Giles —

Recd. seven dollars of H. A. Dibbard Master in Chancery in full for advertizing above notice per hand of J. Bright Smith Dec. 5th 1857

Giles & Scroggs —

And afterwards to wit: on the 11th day of January AD1858. the same being one of the days of the December term AD1857 of said Court the following appears of record in said cause viz:

James L. Tice
vs
Berentje Ahling Executrix
} Bill in Chancery

& Dirke Ohling administrator
of Roolf K Ohling decd Et al.

And now at this day came A. N. Dibbard Esq master in Chancery and files his report herein.

And afterwards to wit of the 13th day of January AD 1858. the same being one of the days of the December term AD 1857 of said Court the following appears of record in said Cause Viz:

James L. Neil Complainant

vs

Berentzi Ohling Executrix & Dirk Roolf Ohling Administrator of Roolf K. Ohling deceased. Paul Jansen Ohling. Gerner K Gerds Berches Adde Berches surviving heirs of Rolf K Ohling deceased

Defendants

Stephenson County Circuit Court of the December term 1857 Bill in Chancery to foreclose mortgage.

It is ordered by the Court that the Masters report of sale in this cause be confirmed. which report is in the words and figures following, to wit:

To the Honorable Benjamin R. Shelden Judge of the fourteenth Judicial Circuit in chancery sitting. In pursuance of and in virtue of a decretal order of this Court made in the above entitled cause on the

twenty first day of September AD 1857 by which it was among other things ordered, adjudged and decreed that the said Defendants to the said Complainant the sum of three thousand and forty six dollars and Eighty eight cents and interest thereon within twenty days after the date of said decree, and that in default of such payment all and singular the mortgaged premises mentioned in the Bill of Complaint in this cause, viz: the South half of Section number twenty in Township twenty six Range nine East of the fourth principal Meridian Containing three hundred and twenty acres more or less. also the South east quarter of Section twenty five in township twenty six Range Eight East of the fourth principal Meridian Containing One hundred and sixty acres more or less, or so much thereof as may be necessary to raise the amount due to the Complainant for principal and interest and costs in this case be sold at public auction by the master of said Court, that such sale be made at the door of the Court House in said County in the City of Freeport; that the master give public notice of the time & place of such sale by publishing the same four weeks successively in one of

the weekly newspapers published in said City of Freeport, that the complainants in this cause may become a purchaser; that the master execute to the purchaser or purchasers a certificate of purchase which certificate should be in writing and describe the land sold and the amount paid for the same, and in case the complainant should become the purchaser it was also to specify the amount of his bid. and that the said master out of the proceeds of said sale retain his disbursements fees and commission on said sale and pay to the complainants or his solicitor out of said proceeds his costs in this suit expended and also the amount so reported due as aforesaid together with legal interest thereon from the date of said report or so much thereof as the purchase money of the mortgage premises would pay of the same and that he bring the surplus moneys arising from such sale, if any there should be into Court without delay to abide the further order of this Court.

I the subscriber, master in Chancery of this Court, residing at Freeport in said County of Stephenson, do respectfully certify and report that having been

charged by the Solicitor for the Complainant with the execution of said decretal order. I advertised said premises to be sold by me at the door of the Court House in Freeport in said Stephenson County on the fifth day of December AD 1857 that previous to said sale I caused notice thereof to be publicly advertised for four weeks successively as follows. viz. by causing a notice thereof to be printed for four weeks successively immediately preceding said sale in a public weekly newspaper printed in the City of Freeport in said County of Stephenson, which notice contained a brief description of the said mortgaged premises, And I do further report that on said fifth day of December AD 1857. the day on which the said premises were so advertised to be sold as aforesaid. I attended at the time and place fixed for said sale and exposed said premises for sale at public auction to the highest bidder, each of the two said described tracts having been offered separately and no bid having been offered or made for either of them the whole of said described tracts of land were offered for sale at auction

107

as aforesaid together, and the said premises were then and there fairly struck off to James L. Neil the Complainant in this cause at the sum of three thousand two hundred and eleven dollars and seventy four cents, he being the highest bidder therefore and that being the highest sum bidden for the same,

And I do further certify and report that I have executed and delivered said purchaser a certificate of said sale — as required by said decretal order and that I have paid over or disposed of the purchase money or proceeds of said sale as follows. Viz: I have paid the Solicitor for the Complainant the sum of twenty five (25) dollars, being the amount of his costs of this suit as taxed and have taken his receipt therefore, which is hereto annexed. I have also retained in my hands the sum of sixty three dollars ($63) and sixty nine (69) cents, being the amount of my fees, commission and disbursements on said sale as will appear by reference to the statement of the items thereof annexed to this my report and to which I refer.

I have received from said Complainant

the sum of Eighty eight dollars and Sixty nine cents which is in payment of the costs fees, Commissions &c in this matter, the balance of the amount bid was the sum of three thousand one hundred and twenty three dollars and five cents, which was the amount due said complainant on said mortgage at the date of said sale. All of which is respectfully submitted December 31. 1857

Homer N. Dibbard
Master in Chancery

James L. Neil
vs
Berentz Ohlingstal

Received of H. N. Dibbard Master in Chancery the sum of twenty five $\frac{00}{100}$ dollars December 31. 1857 being the amount of the Complainants in said Cause as taxed. which costs are paid to me by said master by virtue of said decree. J. Bright Smith
Complt Solicitor

Statement of Masters fees. Commissions and disbursements on the sale referred to in the preceding report and all other costs not included in the taxed bill

1109

of costs in this cause

Drawing advertisement of sale	1.00
Printing bill for publishing notice of sale	7.00
Drawing report of sale	5.00
Preparing certificate of purchase	2.00
Commission on $3211.$\frac{24}{100}$	48.69
	63.69

Filed Jan. 11. 1858.

L. H. Guiteau Clk

Rec'd of L. H. Guiteau ten 00/100 dollars in full for my fees as master in cause of James L. Neil vs B. Ohling to this date. Dec 31st 1857

A. N. Dibbard
Master in Chancery

Mr. Baily.

I was present in M & Co. Bank at the time these transactions took place, It was a few day before the time of redemption run out. The Ohlings were there Col. Mitchell - my impression was Sulzer & Neil were there. They made arrangements with M & Co. M & Co were to take cir. of purchase and pay Neil the amount of money due on it. & to give the Ohlings further time to redeem the land and

to pay back the money to Mitchell & Co. I know of this negotiation going on some time previous to that between the Ohlings & M & Co. & resulted in their arrangement at the Bank.

Witness, Meacham testified to the same facts above stated by M. Baily, also that Putnam one of the firm of James Mitchell & Co. afterwards offered to let Lutzen have a deed of his part of the land if he would pay the amount that was then due on his notes, and at a subsequent time Putnam directed me to tell Lutzen that he could have a deed for his portion of the land in case he would pay the amount due on his notes. I stated this to Lutzen, but he neglected to do it.

M. D. Meacham

Notes of Lutzen Lutzen dated Dec 4, 1855 $600 two years. $550 three years. $400 one year, after date of said notes, on last one $284.41/100 indorsed paid Aug 3. 1857. Notes belong to wit. Received them before deed: took the notes as a security. Willing to give up the notes as far as this

suit is concerned. Notes offered and given in evidence as follows viz:

$600.00 For value Received I promise to pay Berentje Ohling. Dike Ohling. & wife. Mechettje Ohling. Paul Ohling and wife Tetje Ohling Addo Berchen and wife Lameke Berchen four hundred Dollars one year from date

Lutzen Lutzens

Freeport Ill. Dec 4. 1855.

286. 41. Recd this 3d day of August 1857. of Lutzen Lutzens on this note two hundred Eighty four & 41/100 dollars.

$600.00 For value Received I promise to pay Berentje Ohling. Dike R. Ohling & wife. Mechettje Ohling. Paul Ohling & wife. Tetje Ohling. Addo Berchen & wife Lameke Berchen six hundred dollars two years from date. Lutzen Lutzens

Freeport Ills. Dec 4. 1855

$550.00 For value Received I promise to pay Berentje Ohling. Dike R. Ohling. & wife Mechettje Ohling. Paul Ohling & wife. Tetje Ohling. Addo Berchen & wife Lameke Berchen. Five Hundred and fifty Dollars three years from date

Lutzen Lutzens

Freeport Ills. Dec. 4. 1855.

Papers in Circuit Court of the suit of Lutzen Lutzin vs Berentze Ohling et. al. in covenant. given in evidence viz:-

State of Illinois } ss In the Circuit Court of
Stephenson County } Stephenson County of the September term AD 1860

Lutzin Lutzin
vs
Berentze Ohling Dirke R Ohling. Paul I. Ohling and Addo Borchers } Covenant Dam 5000 $

The clerk of the Circuit Court will please issue a summons in the above cause returnable according to Law.

To L. H. Gunteau clerk
Aug. 4. 1860

Bright & Bradley
Plffs attys

Filed Aug 4. 1860.

L. H. Gunteau clk
By Thos North Dep-

State of Illinois } ss
Stephenson County } The People of the State of Illinois to the Sheriff of said County - Greeting We command you to summon Berentze Ohling, Dirke R Ohling, Paul I Ohling, and Addo Borchers, if he be found in your County, personally be and appear before the Circuit Court of said County of

Stephenson on the first day of the next term thereof to be holden at the Court house in the City of Freeport in said County on the first monday in the month of September next to answer unto Lutzen Lutzens in a plea of Covenant to the damage of the said Plaintiff as he says in the sum of five thousand dollars and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness Luther H. Gunteau Clerk of our said Circuit Court and the seal of said Court at Freeport in said County this 6th day of August A.D. 1860

Attest Luther H. Gunteau Clerk

By Thos Norris Dep

The foregoing is all the testimony in this case. Testimony of W.D. Meacham in relation to the declarations of Putnam & Putnam's & Ohling's statements & arrangements in the absence of Complainant. excepted to by Complainants Counsel

Benj. R. Shelden Esq

Stephenson County Circuit Court, Ill.

_____ Fl. Fa.

No. _____

_____ Page.

Fee Book.

_____

Versus

Fl. Fa. EXECUTION.

This Writ calls for:

$.....*Debt.*

$.....*Dm's.*

$.....*Costs.*

$.....

Def's Fee Bill,

Total Amount, $.....

Judgment,.....18

This Writ issued.....18

Return Day.....18

Sheriff's Fees.

Levying Execution,	50
Advertising Property,	25
....*Miles Travel,*	
Commission on $.....	
Certificate of Purchase,	25
Returning Execution,	10
Total Amount,	$.....

.....*Sheriff.*

.....*Plff's Att'y.*

Received this Execution for collection, this _____ day of _____ in the year of our Lord one thousand eight hundred and sixty _____ at the hour of _____

_____

_____ Sheriff.

STATE OF ILLINOIS, }
STEPHENSON COUNTY, } ss.

The People of the State of Illinois to the Sheriff of said County—GREETING:

We command you that of the goods, chattels, lands and tenements of _____

_____

you cause to be made the sum of _____ Dollars, being for the Plaintiff's costs in the within entitled cause, and also the further sum of _____ Dollars, being the defendant's costs in said cause, as the same has been adjudged against _____ in the Stephenson County Circuit Court, as appears of record in the office of the Clerk of said Circuit Court —and this you are not to omit, under the penalty of what the law prescribes—and have these moneys at the Clerk's office of said court, within ninety days from the date hereof, and also this writ.

WITNESS, J. WILSON SHAFFER, Clerk of the Stephenson County Circuit Court, Illinois, and the seal thereof, at Freeport, this _____ day of _____ A. D. 186

711

115

No. 6735 December Term, Stephenson County Circuit Court, 1862

Lurtjen Lurtjens
vs.
Berentjo Ohling et al

PLAINTIFF'S BILL OF COSTS.

Costs Vs.

Fee Book..... Page.....

CLERK'S FEES.

Filg Bill & Proc 10c Sum & filg 40c Doc Suit 5 term 50c	1.00	
Entg Apf & Atty 15c Mot & ord for Rule on Deft to Ans 40c filg Rep 5c	.60	
filg Proc 5c 2. Supbs & filg 80c Mot & ord Continue 40c	1.25	
filg Proc 5c 6 Supbs & fs 2.40 Svg & filg 5 Wit affs 75c	3.20	
Svg 7 Wits 35c Entg & filg Testimony 25c Entg filg & Reg	.60	
Decree 1.25 Ctf Copy of do 1.25 Entg Jugt 25c	2.75	
Entg Satis 15c Ex & filg 45c Proc for do 5c Doc Ex 10c	.75	
" Shffs retn 10c R.B. 30c C & Seal 55c	.95	10.90
Shffs Fees. Youngman Ex & retng Sum	6.00	
" " " Supbs	7.85	13.85
" Robey " do		1.50
Witnesses - Ontje Bollman. Apl term 62 1 Day 10 miles	1.50	
Henry Lurtjens " " 1 " 10 "	1.50	
Reebke Reebkus " " 1 " 10 "	1.50	
Same Dec term 62. 3 " 10 "	3.50	
Charles Torrey " " " 1 "	1.00	9.00
		$35.25

Defendant's Costs

Entg Apf & Atty 15c Entg & filg Demr 25c Entg with dr & of Demr 20	.60	
" & filg Slip 25c filg Ans 5c Entg Svg & filg Apf 35c	.65	
Svg 3 Wits 15c R.B. 30c C & S. 35c Fee bill Ex & filg 45c	1.25	2.50
Transcript to Supreme Court. $25.00 (paid by Defts)		25.00

I, J. WILSON SHAFFER, Clerk of the Stephenson County Circuit Court, State of Illinois, do hereby certify that the above is a true copy from my Fee Book. Witness my hand and the seal of said Court.

J. W. Shaffer Clerk.

Chas C. Rhodes Dep

State of Illinois
Third Grand Division

Supreme Court
April Term A.D. 1865

Berentje Ahling et al
Plaintiff in Error
vs
Lantjen Lantjens
Defendant in Error

And the said Plaintiff by Markham & Bailey their attorneys by leave of the Court for that purpose first had and obtained come and assign the following additional Errors in said Record & proceedings that said Decree orders that defendant have and recover of ~~defendant~~ plaintiffs, the amount of the purchase money of the land in question and interest from the date of the conveyance from plaintiffs to defendant, instead of fixing the amount of such recovery at merely a nominal sum.

2nd That under the pleadings and evidence in the case the Court below did not error in its decree dismissing said Bill.

3d That the amount of said decree is larger than is warranted by the pleadings in the case.

4th That the ~~plaintiff~~ defendant, ~~Bill~~ exhibit in the case, shows and case presenting the interposition of a

court of equity or giving such court juris-
diction: defendants remedy if any he
have being at law. The decree is erro-
neous in giving defendant any stay
in the suit.

Said plaintiffs in error
therefore pray that the decree aforesaid
for the error aforesaid be reversed
annulled and altogether held for nothing
and that they be restored to all things
they have lost by occasion of said decree

Burnham & Bailey
Plaintiffs Attorneys

148

Jeremiah Ohlinger et al

vs

Justices Surfeiters

Additional Assignments

Error

Filed Apl. 29. 1863.

L. Leland

Clk.

116 State of Illinois } ss
Stephenson County }

I, J. Wilson Shaffer, Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a full and complete Transcript of the Record, and papers on file in the above entitled cause, as appears from the Record & papers in my custody.

In Testimony whereof I have hereunto set my hand and affixed the seal of said Court this 25 day of April AD 1863.

J. W. Shaffer Clerk
per E. P. Rodgers Dep.

148

Brentze Ohliny. & others

vs

Lutzen Lutzens

Record

Filed April 9th 1863

L. Delano Clk

State of Illinois
Supreme Court } Third Grand Division
April Term 1863

Berentje Ohling Hilke Ohling
Paul J Ohling & Aeddo Bucher } Plaintiffs in Error
vs
Lutzen Lutzens } Defendant in Error

Afterwards towit on the 24th day April AD 1863 in this same Term before the Justices of the Supreme Court of the State of Illinois at the City of Ottawa in the County of La Salle in said State comes the said Plaintiffs in Error by Merchant & Barker their attorneys and say that in the record and proceedings aforesaid there is manifest error in the towit that the Bill aforesaid and the Matters therein contained are not sufficient in law for the said Lutzen Lutzens to have the relief prayed for in said Bill and awarded to him in said decree and also in this towit that the said Decree is contrary to and unsupported by the evidence in the record and proceedings aforesaid and also in this towit that the said decree orders and directs the Pltffs in Error to pay the Deft in Error more than is asked for in the Bill aforesaid and also in this towit that in the decree aforesaid the Plaintiffs in Error are decreed to pay the Defendants in Error interest on the purchase money of the land in question from the date of the deed up to the time of the Decree and also in this towit that the said decree recites and states Material facts not with proof

aforesaid and said decree is unsupported by the evidence and law in the case and also in this Court that from the Record & proceedings aforesaid the said cause should have been decided in favor of the plaintiffs in Error and against the Defendants in Error All the said Plaintiffs in Error therefore pray that the decree aforesaid for the Errors aforesaid and for other Errors appearing in the Record and proceedings aforesaid be reversed annulled and altogether held for nothing and that they be restored to all things they have lost by occasion of said Decree

Meacham & Bailey
Attys for Plaintiffs
In Error

State of Illinois }
Stephenson County } ss

Plea before the Hon. Benjamin R. Sheldon Judge of the Fourteenth Judicial Circuit of the State of Illinois at a term thereof begun and held at the Court House in the City of Freeport in said County on the first Monday of April A.D. 1861.

Present: Hon. Benjamin R. Sheldon Judge
J. H. Shaffer Clerk
Smith D. Atkins, States Atty
William A. Youngman Shff

Attest J. H. Shaffer Clerk
per C. B. Hodges, Dep

State of Illinois } In the Circuit Court of Stephenson
Stephenson County } ss. County of the April Term A.D. 1861

To the Honorable Benjamin R. Shelton presiding Judge of the Fourteenth Judicial District in the State of Illinois in Chancery sitting

Humbly Complaining shewetho unto your Honor Your Orator Quitzin Quitzin a citizen of the County of Stephenson and State of Illinois. That on the fourth day of December A.D. 1855 your Orator purchased of Berentje Ohling. Heike A Ohling. Paul J Ohling and Addo Borchers all of said County & State the following described tract of land situated in Stephenson County Illinois to wit The East & West Each Quarter of Section Number Twenty five in Township Twenty six North of Range Eight Each Containing One Hundred and Sixty acres of land for the consideration of Two Thousand Two Hundred and fifty Dollars to be paid as follows about Six Hundred Dollars in cash and about Four Hundred Dollars was paid by Wolbrand Diteman for your Orator in work and labor bestowed and done for the said Ohling and Borchers hereinbefore named (and whom your Orator prays may be made Defendants to this his Bill of Complaint) and which was accepted as a cash payment of One Thousand Dollars from your Orator. on said land by said Defendants. and the balance was paid by the Note or Notes of your Orator amounting to Twelve Hundred and fifty Dollars but as the Notes are not in the possession of your Orator and were given in the month of December A.D. 1855 or thereabouts your Orator cannot state whether there was one or more Notes given or the respective amounts of each or what interest they bore if any or when said Notes matured

Your Orator further shewetho unto your Honor that on or about the fourth day of December A.D. 1855 Your Orator paid unto the

said Defendants or some one or more of them for said Defendants the sum of One Thousand Dollars aforesaid on said purchase and at the same time your Orator made his Note or Notes for the sum of Twelve Hundred and fifty Dollars payable to the said Defendants or some one or more of them as they agreed upon and delivered the said Note or Notes to the said Defendants

Your Orator further shewetho unto your Honor that upon the payment of the said sum of One Thousand Dollars and the Execution and delivery of the Note or Notes as aforesaid the said Defendants then and there by said agreement of purchase to make execute and deliver to your Orator a Warrantee Deed for the land and premises described in this your Orators Bill of Complaint and that the same was to be free and clear of all liens and incumbrances of whatsoever kind or nature

Your Orator further shewetho unto your Honor that on the fourth day of December A.D. 1855 the said Defendants together with Meeheltje H. Ohling Wife of Keike R. Ohling. Teetje Ohling Wife of Paul Ohling and Janeke Borchers Wife of Addo Borchers in pursuance of said sale as aforesaid made Executed and delivered to your Orator a Warrantee Deed properly acknowledged for the land described in this your Orators Bill and delivered the same to your Orator. and which your Orator received and on the Second day of September A.D. 1857 your Orator caused the said Deed to be filed for record in the Office of the Clerk of the Circuit Court of Stephenson County Illinois a copy of which is hereto attached marked Exhibit A. which your Orator begs leave to refer to make part hereof as this Court shall deem your Orator entitling at the time he had a clear and indefeasible title in the premises in said Deed described

Your Orator further shewetho unto your Honor that he is

a German and does not understand the English language and cannot read the English writing or print and that at the time of the drafting of said Warrantee Deed and at the time of the purchase as aforesaid the said Defendants represented to your Orator that they was the owners in fee of the same and had a good lawful right to sell the same to your Orator

Your Orator further shewetho unto your Honor that your Orator made said purchase of said land of the Defendants on the assurance and representations of the Defendants falsely and fraudulently made to your Orator in Order to induce your Orator to purchase the same stating that they had a good title to the whole of said land of One Hundred and sixty acres, and Your Orator believing and relying on said false and fraudulent representations as aforesaid purchased the same as aforesaid but that in truth and in fact the said Defendants had not the title to said land only as they appear as the heirs of Robert M Ohling deceased. and as the Will of the said Robert M Ohling shows which shows all the interest of the Defendants in said premises at the time of the purchase aforesaid subject to the outstanding liens and incumbrances placed upon said premises by the said Robert M Ohling in his lifetime which were enforced subsequent to the death of the said Robert M Ohling and which Will reads in the words & figures following, to wit and which your Orator asks leave to make a part of this his bill and to refer to and make proof thereof as this Honorable Court shall direct

" A few days since Mr R M Ohling, gave me to understand that
" he on account of sickness wished by Will and testament to dispose
" of his property To this end he called on me the subscriber a
" Minister beside to the unnersigned Witnesses today to come
" to his house. We found Mr R M Ohling sick in bed. no with standing
" in enjoyment in his full senses which Mr Rieckenbacke and

" a Physician who was present attended to. and concluded in the
" his free will and without compulsion by any one he gave us
" his last Well considered Will to understand and desired one to
" write the same as follows I the undersigned Roef Rieng
" Ohling with heedy especially that after my decease or death
" my beloved Wife Berentje whose maiden name was Pauli to
" become the sole heir of all my goods property and effects and in
" such a manner that she during her life can use and control
" the same according as she thinks best and likes should she however
" marry again then she shall hold and have no more than One
" Third or as much as the law allows her after the death of my
" aforesaid Wife the following division of my property shall
" take place.

" 1st My first born son Hecke Roef Ohling shall have the
" farm with appertainments thereunto belonging of 160 acres
" of land on which he now resides.

" 2d My second son Paul Janeen Ohling shall have the farm
" on which he now has Erected the limestone house. besides 160
" acres of land. The stream of running water between the aforesaid
" farms which form the line between said farms shall belong
" to both of my son for the joint benefit of both farms

" 3d My daughter Jonneke Geertruida Ohling united and married
" to Borchers shall have also after the death of my Wife
" Berentje whose maiden name was Pauli the farm
" containing 160 acres of land as her personal inheritance
" on which she resides but in as much as the buildings are
" more costly and Expensive than those of her brothers she shall
" be compelled to pay to her brothers upon her coming in possession
" of said farm ($500) Five Hundred Dollars namely $250 to
" each one. The aforesaid farm which I have willed to my
" daughter Jonneke Geertruida is occupied by herself and husband
" Addo Borchers namely the One half and the other half by me

5 " and my Wife. This farm my son in law has rented from me for
" the term of Eight years and my express wish is that this
" contract shall remain in force in case my death before the
" term expires. should my aforesaid daughter Janneke Gerds
" married to Borchers die without leaving children then I do
" hereby ordain and order that the said farm Cum armexis
" fall back to my aforesaid two sons Except that my son in law
" shall claim as much as the law of the Country shall give him.
" My 40 acres of timberland shall be divided among the three
" aforesaid farms and casting lots for the same so that each of the
" three children come in possession of 13⅓ acres should my two
" sons aforesaid who are born in our wedlock wish to buy the
" 160 acres of land which I have bought from Willike and
" which is situated by or by the river of Veji Reintsland rah
" Eight Dollars per acre they shall have the privilege to do so or I
" approve hereby expressly this probable purchase. They
" shall be obligated after the death of my Wife to pay to their
" sister her proportionate shall. all the real Estate demands
" cattle and stock household furniture and other possessions
" which belong to me shall belong to my aforesaid Wife and she
" shall have the unlimited control over the same. and I do hereby
" again to prevent any mistake or misunderstanding & by my
" signature declare that my cherished wife Berentje whose
" maiden name Pauli during her life in case she does not marry
" again shall have and hold the aforesaid inheritance undisturbed
" control them as she thinks best according to her wish and
" desire. that our first born son Heike Roelf Ohling shall become
" her assistant. I therefore not only approve thereof but it is
" my ardent wish and my conclusion I pray that this my
" testament shall remain unchanged and unaltered in as
" much as it is my last will which I have made upon due
" consideration deliberation and freely which the Physician

6

" Minister and two Witnesses through their own signature affixed
" the testator thereof Ridgeway Stephenson Conway August 21st 1885
" The Twenty first day of August Eighteen Hundred and fifty
" nine (Seal) Roelof K Ohlenig
" (Seal) H Ruckenbach MD as Witness of the
" signature of his own hand
" (Seal) D Dirksen as Witness of the signature
" of his own hand
" (Seal) G Dirksen as Witness of the signature of
" his own hand
" (Seal) in fidem G D Blesene Minister as Witness
" of the signature of their own hands and writer of the Testament

Your Orator further showeth unto your Honor that the said Roelof K Ohlenig was the owner of said land in his lifetime and that the said Roelof K Ohlenig departed this life previous to the purchase by your Orator of the said premises from the said Defendants as aforesaid and that the said Roelof K Ohlenig died leaving the Defendant Berentje Ohlenig his widow and the Defendants Hecke Roelf Ohlenig and Paul Jansen Ohlenig his two sons and Jannetje Geertje Borchers his daughter all lawful heirs of the said Roelof K Ohlenig

Your Orator further showeth unto your Honor that on 1st day of May A.D. 1886 your Orator took possession of the land purchased by your Orator from the said Defendants and that said land at that time was in a wild state of nature uncultivated & uninhabited in any respect and that no part thereof was broken for the purpose of cultivation or inclosed or fenced. And that your Orator remained in possession of said land until May A.D. 1860 & during said time made valuable improvements on said land by breaking up the same for cultivation and built good substantial fences upon said land & inclosed the land also improved it by the erection of two dwelling houses and a stable and the digging of wells and the

selling out of fruit and ornamental trees and which improvements were of great value and all which were made and done by your Orator in good faith and before he discovered the defect in the title to said premises as hereinafter mentioned

Your Orator further sheweth unto your Honor that the said Defendants never were the owners of the land described in the Warranty Deed as aforesaid from the Defendants to your Orator that your Orator was obliged to leave said premises in May A.D. 1860 by and through the foreclosure proceedings hereinafter mentioned

Your Orator further showeth unto your Honor that at the time he purchased said land he paid therefor at the rate of Twenty two hundred and fifty Dollars and that at the time he acquired said premises they were worth the sum of Four Thousand Dollars with the improvements

Your Orator further showeth unto your Honor that your Orator had said Warranty Deed in his possession until the month of February A.D. 1860 before your Orator had any knowledge that his title to said land was not perfect & before your Orator was aware that the Defendants were not the owners of said land at the time they sold it to your Orator. And your Orator had no knowledge at the time of the purchase that there was any outstanding liens or incumbrances upon the said premises placed there by the said Roger Q. Ellis in his lifetime or any one else or that any other person or persons had any interest in said land. but as soon as your Orator had any knowledge of any defect in his title to said land or that the Defendants could not give your Orator a free and unincumbered title to said land your Orator declared to said Defendants that said purchase was void and your Orator employed an attorney and commenced an action of Covenant in the Circuit Court of Cook County Circuit Court of Illinois against said Defendants to recover his damages that afterwards your Orator dismissed said suit for the purpose of filing this bill

Your Orator further shewetho unto your Honor that on the Eighth day of August AD 1854 Robert Oblenig in his lifetime made Executed and delivered to one Thomas B Milliken a Mortgage for the sum of Four Thousand Dollars upon the following real Estate in Stephenson County Illinois to wit The South half of Section Number Twenty (20) in Township Number Twenty six Range Nine East also the South East Quarter of Section Number Twenty five in Township Number Twenty six of Range Number Eight East which said Deed was duly acknowledged and was afterwards to wit on the fourth day of October AD 1854 filed in the Office of the recorder of Stephenson County Illinois for record and to which Your Orator begs leave to refer and to make such proof thereof as this Honorable Court shall direct

Your Orator further shewetho unto your Honor that after the Execution and delivery of said Mortgage deed as aforesaid the said Thomas B Milliken assigned his remaining interest in said Mortgage deed to one James L Neil and that on the Twentieth day of February AD 1857 the said James L Neil filed his Bill in Chancery in the Circuit Court of Stephenson County Illinois to foreclose said Mortgage and that afterwards to wit on or about the Twenty second day of September AD 1857 the said James L Neil obtained a decree of the Circuit Court of Stephenson County Illinois for sale of said land described in said Mortgage deed to all of which proceedings the decree and the papers in said cause your Orator begs leave to refer and to make such proof thereof as this Honorable Court shall direct

Your Orator further shewetho unto your Honor that the said land described in said Mortgage deed and also in said decree includes and covers the One hundred and eighty acres of land described in said deed from the said Defendants to your Orator and sold as aforesaid by the said Defendants to your Orator as aforesaid

Your Orator further shewetho unto your Honor that on the Fifteenth day

9

of December A.D. 1857 Homer N. Hubbard Master in Chancery for Stephenson County Illinois sold the land described in said Mortgage, deed and decree to James L. Neil for the sum of Three Thousand Two Hundred and Eleven Dollars and seventy four cents.

Your Orator further shewetho unto your Honor that after the sale as aforesaid the said James L. Neil assigned his said certificate of purchase to James Mitchell & Co. or James Mitchell or Holden Putnam individually, and that neither the Defendants or any person for them ever redeemed said land from said sale but that the same became forfeited to the holder of said certificate of purchase and that afterwards said Mitchell and said Putnam or one or the other of them being the holders of said certificate obtained a Deed for said land of said Master and sold the tract of land purchased by your Orator as aforesaid from the said Defendants One Hundred acres thereof to Henry Luitjens and Sixty acres thereof to Robert Ribbas and made them the necessary deeds therefor and to which deeds your Orator has no access but refers to and wishes to make such proof thereof as this Honorable Court shall direct and into and now in possession of said premises and have been since your Orator was compelled to a and no said premises as aforesaid. And to all which proceedings and decree of sale and Deeds as aforesaid your Orator begs leave to refer and to make such proof thereof as this Honorable Court shall direct

Your Orator further shewetho unto your Honor that on the third day of August A.D. 1857 and before the said defect in the title to the premises purchased by your Orator as aforesaid was discovered by your Orator Your Orator paid on his said Note to one of said Defendants the sum of Two Hundred and Eighty four Dollars and forty one cents.

Your Orator further shewetho unto your Honor that the said Defendants or some or more of them at the present time holds the said Note or Notes of your Orator and refuses to deliver them up to your Orator for cancellation and to refund said sum of

One Thousand Dollars to your Orator with the legal rate of interest from the time of the payment of the same up to the time of refunding of the same and refuses to pay your Orator for his improvements which he made upon said land and premises which he was in possession of the same or to pay your Orator the increased value of said land over and above what your Orator paid for the same although your Orator has often requested them to do so and he hoped that the said Defendants would have complied with this his most reasonable request

But now so this may it please your Honor that the said Defendants combining and confederating with divers other persons to your Orator yet unknown but whose names when discovered your Orator prays may be inserted herein as Defendants and they made parties hereto with proper and apt words to charge them how to injure your Orator the said Defendants do now absolutely refuse to refund to your Orator the said sum of One Thousand Dollars with lawful interest from the date of the payment thereof paid by your Orator as aforesaid and refuse to pay your Orator for the improvements on said premises aforesaid or the increased value of said premises in consequence of the improvements of your Orator as aforesaid and refuse to deliver up to your Orator the said Note or Notes for cancellation pretending that they are not indebted to your Orator. and that your Orator has no claim upon them

All which actings and doings and pretences of the said Defendants and their confederates are contrary to Equity and good conscience and tend to the manifest wrong and injury of your Orator of your Orator in the premises

In tender consideration thereof and for as much as your Orator is remediless in the premises at hand by the strict rules of the common law and is only relievable in a Court of Equity where matters of this nature are properly cognizable and relievable To the end therefore that the said Beverly Ohling. Hooke R Ohling

11

Paul J. Ohling and Addo Borchers and their confederates may each respectively, full true direct and perfect answers make according to the best of their respective knowledge information and belief to all and singular the matters and charges aforesaid (your Orator waiving hereby pursuant to the Statute the necessity of the answers of such Defendants or either of them being sworn under the oath of said Defendants or either of them) and that as fully in every respect as if the same were here again repeated and they thereunto particularly interrogated

And that the said Berentje Ohling. Hecke R Ohling. Paul J Ohling & Addo Borchers may be decreed to refund to your Orator the said sum of One Thousand Dollars the purchase money paid aforesaid and the said sum of Two Hundred and Eighty four Dollars and forty Cents paid with lawful interest from the date of the respective payments up to the time of refunding the same. and that the contract or purchase of your Orator from the said Defendants aforesaid may be rescinded and that the said Defendants may be decreed to pay to your Orator all the Expenses that he may be put to relative to said purchase and sale together with an allowance for any money that your Orator laid out in repairs and improvements during the time he was in possession of said premises and that the said premises and that the said Defendants may be decreed to deliver up to your Orator for cancellation the Note or Notes mentioned in this your Orators bill. and that in the meantime the said Defendants may be restrained and enjoined from selling transferring assigning collecting or in any manner disposing of the said Note or Notes until the final Order and determination of this Court therein. and that the said Defendants may be decreed in case of a refusal to deliver up said Note or to pay to your Orator the consideration of Two Thousand Two Hundred and fifty Dollars mentioned in said Deed and interest up to the time of the payment of the same to your Orator And that the said Defendants

may be decreed to pay to your Orator the increased value of said land at the time your Orator was ejected from the same over and above what your Orator had agreed to pay said Defendants for the same And that your Orator may have such further relief or such other relief as the nature of his case shall require and as shall be agreeable to Equity. And that the said Berentje Ohling Hercke R Ohling Paul J Ohling Addo Borchers their Counsellors Attorneys Solicitors Officers or agents may be restrained by an injunction issuing out of this Court from selling assigning transferring or in any manner disposing of said promissory Note or Notes made by your Orator to the said Defendants and also from instituting or proceeding in any action at law for the collection of said Note or Notes. May it please your Honors to grant unto your Orator the Writs of Injunction issuing out of and under the seal of this Honorable Court directed to the said Berentje Ohling Hercke R Ohling Paul J Ohling and Addo Borchers their Counsellors Attorneys solicitors and agents commanding them and each of them absolutely to desist and refrain from selling transferring assigning or disposing of said Note or Notes and from instituting any suit or suits for the collection of said Note or Notes

May it please your Honor to grant unto your Orator the Writ of Subpoena (Summons in Chancery) issuing out of and under the seal of this Honorable Court to be directed to the said Berentje Ohling Hercke R Ohling Paul J Ohling and Addo Borchers commanding them by a certain day and under a certain penalty to be therein inserted to be and appear before your Honor in our Court of Chancery and then and there to answer the premises and further to stand to and abide such Order and decree therein as shall be agreeable to Equity and good conscience

And your Orator shall ever pray &c

Luitjen Luitjens
Complainant

H Rugh Sol
W Wd Pearley of Counsel

18

State of Illinois
Stephenson County } Be it remembered that on this day of A.D. 18 before me personally appeared Luitjen Luitjens the person whose name appears subscribed to the foregoing bill made oath that he has heard read the above and foregoing bill by him subscribed and is acquainted with the contents thereof and that the same are true as of his own knowledge except those matters therein stated to be on his information and belief and as to those matters he believes them to be true

Exhibit A

Warranty Deed Building Lots Office Freeport Illinois.

Know all Men by these presents That Berentje Ohling Hauke A Ohling another Wife Michelle. Paul Ohling another Wife Tetje. Addo Borchers another Wife Jannake Medow and heirs at law of Roelf H Ohling deceased. County of Stephenson and State of Illinois parties of the first part in consideration of Two Thousand Two Hundred and fifty Dollars to them in hand paid by Luitjen Luitjens of County of the aforesaid and State of Illinois party of the second part the receipt of which is hereby acknowledged Have granted bargained sold conveyed and confirmed and do hereby grant bargain sell convey and confirm to the said party of the second part and to his heirs and assigns forever the following described tract or parcel of land situated in Stephenson County and State of Illinois to wit The South East Quarter of Section Twenty five (25) in Township Twenty one (21) North of Range Eight East in the Destrict of land subject to sale at Dixon Illinois Containing One Hundred and Sixty acres. With the hereditaments and appurtenances thereto belonging or in anywise appertaining To Have and to Hold said premises above described to the said party of the second part

his heirs and assigns forever. And the said party of the first part for themselves and their heirs Executors and administrators do Covenant to and with said party of the second part his heirs and assigns that they are lawfully seized in fee simple of said above described premises that the aforesaid premises are free from all incumbrances and that said party of the first part will their heirs Executors or administrators shall warrant and defend said premises to the said party of the second part his heirs and assigns against the lawful claims and demands of all or all persons whomsoever and Mechelje. Tetje and Janneke Wiers of the said Heike B. Ohling. Paul J Ohling Addo Borchers in consideration of the payment made as aforesaid do hereby release to said party of the second part their heirs and assigns forever all their right of dower in the above described premises. In Testimony Whereof said grantor have hereunto subscribed their hand and seal at Freeport this fourth day of December A.D. 1855.

Executed in presence of.
E Torney

Berentje Ohling (Seal)
Heike B Ohling (Seal)
Paul J Ohling (Seal)
Addo Borchers (Seal)
Mechelje W Ohling (Seal)
Tetje Ohling (Seal)
Janneke Borchers (Seal)

State of Illinois
County of Stephenson } ss. I. Erasmus Torry Justice of the Peace in and for said County do hereby certify that Berentje Ohling. Heike Ohling. & Wife Mechelje Paul Ohling & Wife Tetje Addo Borchers & Wife Janke personally known to me to be the persons whose name are subscribed to the foregoing deed as having Executed the same appeared before me this day in person and acknowledged that they signed sealed and delivered the same as

15

their free and voluntary act & deed for the uses and purposes
therein set forth. And the said Mehally Ohling. Eje Ohling
Jacob Borchers personally known to me to be the wife of the
said Mike Ohling. Paul Ohling & Addo Borchers and as the
persons who subscribed said Deed and as such having been by
me made acquainted with the contents and meaning of said
instrument of writing & Examined separate and apart from her
husband acknowledged that she had Executed the same and
relinquished her dower to the lands and tenements therein mentioned
freely and without compulsion from her husband and that
she does not wish to retract the same. Given under my hand
and seal at this Tenth day of December A.D. 1855

Erastus Torrey J.P. (Seal)

State of Illinois } Office of Clerk of Circuit Court
County of } I certify that this Deed was filed
for record in my Office on the Second day of September A.D.
1857 at 4½ o'clock P.M. and recorded in Book No 26 of Deeds on
page 98 &c and Examined

L. W. Guiteau Clerk
By J. M. Lewis Depty

Filed Feb 11. 1861
J. W. Shaffer Clk
per L. W. Guiteau Dep.

14

State of Illinois } In the Circuit Court of Stephenson County
Stephenson County } ss. of the April Term A.D. 1861

Luitjen Luitjens
vs.
Berentje Ohling, Henke A. Ohling, Paul J. Ohling & Addo Borchers } In Chancery

When filing the accompanying bill the Clerk of the Court will please issue a summons in Chancery in the above cause returnable according to law

Yours &c
L. W. Guiteau Solr for Complt
Feb 11th 1861

Rights & Brawley
Sol for Complt

Filed Feb 11. 1861 J. W. Shaffer Clk
per L. W. Guiteau Dep

State of Illinois }
Stephenson County } ss. The People of the State of Illinois
to the Sheriff of said County Greeting We command you that you summon Berentje Ohling, Henke A. Ohling, Paul J. Ohling & Addo Borchers if he shall be found in your County personally to be and appear before the Circuit Court of Stephenson County on the first day of the next term thereof to be holden at the Court House in Freeport in said County on the first Monday of April next to answer unto Luitjen Luitjens in his certain bill of Complaint filed in the said Court in the Chancery side thereof and have you then and there this Writ with an endorsement thereon in what manner you shall have executed the same

Witness J. W. Shaffer Clerk of our said Court and the seal thereof at Freeport in said County this 11th day of February A.D. 1861

(Seal)

J. W. Shaffer Clerk
per L. W. Guiteau Dep

18

Served the within Writ by reading the same and delivering a true copy of it to the within named Berentje Ohling Henrietta Ohling: and Broches this 11th day of February AD 1861. Served the within Writ by leaving a true copy of same (and explaining the contents of it) with a white person over the age of fifteen years at the place of residence of within named Paul J Ohling this 11th day of February AD 1861

W A Youngman Sheriff
By Wm Woods Graham Deputy

Service 1.50
Mileage 2.40
Return 10
Copy 2.00
$ 6.00

19

State of Illinois } In the Circuit Court of Stephenson
Stephenson County } County In Chancery
Berentje Ohlenz, Ehat
ads
Lulzen Lulzen

The Demurrer of Berentje Ohlenz Heike Ohlenz. Paul J Ohlenz and Addo Borchers Defendants to the Bill of Complaint of Lulzen Lulzen Complainant

These Defendants respectively by protestation not confessing or acknowledging all or any of the matters and things in the Complainants Bill to be true in such manner and form as the same are therein set forth and alleged do Demur thereto and for cause of Demurrer show that the said Complainant hath not in and by his said Bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from and against these Defendants Wherefore these Defendants demand the Judgment of this Hon Court whether they shall be compelled to make any further or other answer to the said Bill or any of the matters and things therein contained and pray to be hence dismissed with their reasonable Costs

U D Meacham
Sol for Defendants

Filed April 3. 1861
J. W. Shaffer Clk

21

State of Illinois } In the Circuit Court of
Stephenson County } Stephenson County

Lutzen Lutzen
vs
Pientje Ohlenz
Heike B. Ohlenz
Paul J. Ohlenz &
Addo Borchers

The joint and several answers of the above named Defendants to the Bill of Complaint of Lutzen Lutzen Complainant

These Defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and Exception to the many Errors and insufficiencies in the Complainants said Bill of Complaint Contained for answer thereunto or unto so much or such parts thereof as these Defendants is advisable for these Defts to make answer unto they answer and say that the Complainant did not purchase of these Defendants the land mentioned in said Bill as therein stated nor did not make the payments as therein stated and no notes were given as therein stated. That the said Complainant did not pay to the Defts or Either of them on the 4th day of Dec 1858 the sum of One Thousand Dollars nor any sum whatever on the said purchase.

These Defts deny that there was ever any agreement for them to convey the said land mentioned in said Bill to the Complainant clear of all incumbrances

These Defts deny that they or the other persons named in said Bill ever Executed or delivered the deed mentioned in said Bill These Defendants deny that Complainant is a German that any false or fraudulent representations were made to Complainant as stated in said Bill. The Complainant well knew the title of these Defendants that they were the heirs or

representatives of R K Ohling deceased. These Defts deny that the Complainant lost his possession of the said land as stated in said Bill. That all the improvements on said land made by the Complainant were made with a perfect understanding of the condition of the title to said land.

These Defts say that they were the owners of the premises with the other persons mentioned at the time the said Deed was made & delivered to the Complainant. The statements in the Bill in which to the Mortgage to Milliken are not true. Defts deny all in said Bill that relates to the said Mortgage & deny that there was any assignment of said Mortgage to James O'Neil & also deny everything relating to the foreclosure of said Mortgage by Neil & the sale under decree by Hubbard the giving certificate of sale & the assignment of certificate to James Mitchell. These Defts say that Complainant ought have had a deed of his parcel had he paid his notes as he agreed. These Defts tried several times to induce the Complainant to pay to James Mitchell Esq on the certificate the amount of his note given for said land & take a deed of his land but Complainant absolutely refused to do it.

These Defts did not at the filing of the Bill in this cause nor have possession of the said Notes but had transferred them to another person & the Complainant never demanded the said Notes of these Defendants. These Defendants deny all unlawful combinations &c & pray to be discharged with their reasonable costs &c

Berentje Ohling
Heike R Ohling
Paul J Ohling
Addo Borchers

R D Meacham
Sol

Filed Aug 6 1861
J W Shaffer Clerk
per E R Hodges Dep

28

State of Illinois } In the Circuit Court of Stephenson
Stephenson County } County of the September Term
A.D. 1861

The replication of Luitjen Luitjens Complainant to the answer of Berentje Ohling, Heike Ohling, Paul J Ohling & Addo Borchers Defendants

This replicant saving and reserving to himself all and all manner of advantage of Exception to the manifold insufficiencies of the said answer for replication thereunto saith. That he will aver and prove his said Bill to be true, certain and sufficient in the law to be answered unto. And that the said answer of the said Defendants is uncertain untrue and insufficient to be replied unto by this by this replicant and that this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto confessed and avoided traversed or denied is true. all which matters and things this replicant is and will be ready to aver and prove as this Honorable Court shall direct and pray as in and by his said Bill he hath already prayed

Luitjen Luitjens

Pughe & Pearley
Sol & Counsel

Filed Augt 28th 1861
J W Shaffer Clk
per L H Guiteau Dep Clk

STATE OF ILLINOIS,
THIRD GRAND DIVISION. } ss.

SUPREME COURT.

APRIL TERM, A. D., 1863.

BERENTJE OHLING,
HEIKE R. OHLING,
PAUL J. OHLING, AND
ADDO BORCHERS,
Plaintiffs in Error,
vs.
LUITJEN LUITJENS,
Defendant in Error.

BRIEF OF PLAINTIFFS IN ERROR.

The decree in this case is erroneous for the following reasons:

I.

The decree is for a larger sum than the defendant shows himself entitled to by his bill.

The bill alleges the consideration paid for the land in question to be $2,250, and prays for a decree for the re-payment of *that specific sum.* The decree, however, orders that defendant recover of plaintiffs the sum of $2,550, as the amount of said consideration, with interest thereon. It may be said that the cash payment proved, and the notes from defendant to plaintiffs, read in evidence, together, make up the sum of $2,550. "The defendant, however, if he recovers at all, he must do so upon "the case made by his bill. He is not permitted to state one case in the bill, and "make out a different one in proof. Although a good case may appear in the "evidence, yet, if it be variant from the one stated in the bill, the bill will be "dismissed." McKay vs. Bissett, et al, 5 Gil., 505; White vs. Morrison, et al., 11 Ill., 361.

II.

The variance between the bill and proofs must be fatal to the defendant's recovery.

The bill sets forth the purchase of the land for the consideration of the $2,250, of which $1,000 was paid down, and $1,250 by defendant's notes. The proofs show the actual consideration to be $1,000 paid down, and defendant's three notes to plaintiffs for the several sums of $400, $600, and $550, making in all $2,550. See same cases above cited; also, Morgan vs. Smith, et al., 11 Ill., 194; Rowan vs. Bowles, et. al., 21 Ill., 17. The statement in the bill of the consideration of the contract between the parties is *matter of description*, and this Court has frequently decided that any material variance between the contract alleged, however slight, and the one proved is fatal. Buckmaster vs. Grundy, 1 Scam., 312.

The decree allows defendant interest upon said consideration from December 4th, 1855, the date of said conveyance; whereas interest should have been allowed only from March 10th, 1859, the date of the Master's Deed, under the foreclosure proceedings.

The title conveyed to defendant by plaintiff's deed was in fee, subject only to be defeated by the foreclosure of the outstanding mortgage to Milleken. Under this conveyance defendant enters immediately into possession of the land, which he occupies, cultivates, uses and enjoys, until May, 1860, at which time he surrenders possession to Mitchell, the Grantee in the Masters deed. Up to the execution of the Masters deed there is no liability on the part of defendant to account for mesne profits. Even if such liability ever existed in favor of the mortgagee after condition broken, such liability was extinguished by the subsequent sale of the mortgaged premises under the decree for the full amount due on the mortgage and costs. In legal contemplation the use of the land is equal to interest on the purchase money, and until defendant becomes liable to account to the holder of the title paramount for mesne profits, the use of the land will countervail defendants right to interest.

In Staats vs. Executors of Ten Eyck, 3 Caines, 114, Ch. J. Kent says; "The seller is "generally bound to answer for the interest of the purchase money, and the interest "ought to be commensurate in point of time with the legal claim to the mesne "profits. This right to interest rests on very plain principles. The vendor has the "use of the purchase money, and the vendee loses the equivalent by the loss of the "mesne profits. The interest ought to commence from the time of the loss of the "mesne profits."

In Caulkins et. al. vs. Harris, 9 John 324, where the grantee had been in the actual enjoyment of the land, and taken the mesne profits for *fifteen* years without any valid title from the grantor, it was held that the grantee was entitled to recover the consideration money and interest thereon for *six* years only.

In Bennett vs. Jenkins, 13 John, 50, it was held that the damages which the grantee is entitled to recover, are the consideration money with interest for such time as he is liable for the mesne profits.

In Hale vs. New Orleans, 13 La. An. 499, it was held that the purchaser who went into possession of the property sold is entitled to recover from his warrantor, interest on the price paid from the date of the eviction.

In Fernander vs. Dunn, 19 Geo. 497, it was held that when a purchaser of land is evicted after several years enjoyment of the estate, the paramount title then first accruing the measure of his damages, is the purchase money, with interest for the period only for which there was liability for mesne profits, to wit: from the accruing of the title paramount.

To same effect see also Cox vs. Henry, 32 Penn. State R., 18; Kyle vs. Fauntleroy 9 B. Monroe 620; Clark vs. Poor, 14 Ohio, 118.

IV.

The decree gives defendant interest on the entire purchase money from the date of the deed, while defendant's notes, given for said purchase money, run one, two, and three years *without interest*.

V.

The defendant seeks to recover in this case by showing an eviction by *paramount title*. Such title is attempted to be deduced through a mortgage placed on the land by Ralph K. Ohling, the ancestor of plaintiffs and the subsequent foreclosure of said mortgage.

To such foreclosure suit, however, the proof shows that defendant in error was not made a party.

The mortgage bears date August 8, 1854; the deed, from plaintiffs to defendant, December 5th, 1855. Defendant went into actual possession and occupancy of the land in May, 1856, and the bill to foreclose the mortgage was filed February 20, 1857, making only the heirs and executors of Ralph K. Ohling, deceased, defendants. Defendant in error was not a party to said bill. It is clear that no interest of defendant was affected by said foreclosure proceedings, and that all his rights remain precisely as though *no such foreclosure had ever taken place.*

In Watson vs. Spence, 20 Wend., 260, it was held that a decree of foreclosure of the equity of redemption, and a sale in pursuance thereof on a bill filed *against the mortgagor alone* do not affect the rights of purchasers deriving title to the premises, from and under the mortgagor, and who are not made parties to the bill.

In Bradley vs. Snyder, 14 Ill. 263, it was held that the holder by conveyance of an equity of redemption is not barred from redeeming the premises when sold under a decree of forclosure, if such holder was not made a party to the proceedings taken to foreclose.

In Fuller vs. Van Geesen, 4 Hill, 171, it was held that a decree of foreclosure is inoperative by way of estopped upon one not made a party to the suit, and who entered into possession of the mortgaged premises before the suit was commenced, nor can he be turned out of possession by an execution on the decree. See also, Reed vs. Marble, 10 Paige 409.

At the commencement of said foreclosure suit, the entire ownership of the equity of redemption was in defendant. The bill to foreclose was brought against persons who at the time had no interest whatever in the land. The court thereby obtained no jurisdiction over the land, and its decree so far as the land is concerned is a *mere nullity.*

In the case of Watson vs. Spence above cited, which was a bill of foreclosure filed against the mortgagor alone he having previously conveyed the equity of redemption, the court say: "He (the complainant) obtained a decree which was a nullity, "because against a mere stranger. This void decree directs an account and fore-"closure, a sale and deed by a master, the latter equally void, of course, with the "decree from which it emenated. It passed nothing. In short the objection is that

"the whole proceedings in the Court of Chancery and in the master's office passed "without the Court acquiring jurisdiction. It is a conceded fact that not a soul "having a particle of interest in the equity of redemption was ever served with "process."

[redacted]

The mortgage to Milliken covers 320 acres of land, beside the land in question. This 320 acre tract does not appear, from the evidence, ever to have been conveyed by the heirs of Ralph K. Ohling, deceased. It will therefore be presumed that the equity of redemption in said tract remained in said heirs at the time of the foreclosure. The master's report shows that all the land included in the mortgage was offered for sale and sold together in one parcel, for the full amount of the mortgage, and costs. By that sale the mortgage was extinguished. That sale conveyed a good title to the 320 acres, but was void as to the 160 acres in question. The purchaser being the complainant in the foreclosure suit, was charged with notice of all proceedings in that suit and must have bid in view of the interests capable of being passed by the sale. He must have bid with the understanding that he was to take a good title to the 320 acres, but that no interest in the 160 acres could pass to him by the sale. By bidding then the full amount of his mortgage, the mortgage became satisfied out of the 320 acre tract, leaving the land in question unencumbered.

VI.

There is no attempt in this case to prove title by the first of these methods. The proofs are altogether silent as to the title of Ralph K. Ohling to the land in question, except that he assumes to execute a mortgage on it. He is not even shown to have been in possession of it, or to have any right to it whatever. Has the defendant then succeeded in showing a derivation of title to both Mitchell and himself from Ralph K. Ohling? The evidence of Mitchell's title is the mortgage and the foreclosure proceedings. The proof, however, fails to show any privity of title between Ralph K. Ohling and defendant as to the land in question. There is evidence of a deed of this land from plaintiffs to defendant; also evidence that plaintiffs are heirs of Ralph K. Ohling. The proof also shows the will of Ralph K. Ohling, by which he gives "all his goods, property, and effects," to his wife, Berentje Ohling, one of the plaintiffs, for and during her life. After her death his real estate, described as farms on which one or another of his children resided, &c., to be divided among said children. There is no description in the will *identifying* any land thereby disposed of with the land in question; and as there is no proof that the testator owned this land, it cannot be deemed to have passed to plaintiffs under the general description "all my property." There is no proof outside the will aiding the identification. The title of defendant fails to be carried back to the common source, and the Court is left quite in the dark as to the relative strength of the titles of defendant and Mitchell.

VII.

The Court erred in rendering its decree in favor of defendant for that portion of the purchose money for which defendant's notes were still unpaid.

True, the evidence shows that the notes had been passed to witness, Meacham, who was plaintiff's Solicitor in the Court below. Meacham, however, swears that "*he is "willing to give up the notes so far as this suit is concerned.*" This amounts to an offer on the part of the witness made in open Court on the trial, to surrender the notes if such surrender could be of any avail, or subserve any purpose in the suit. For all purposes, whether to be used as evidence or given up for cancellation, these notes were thus placed at the disposal of the parties. It was the duty of defendant to receive the notes instead of seeking a recovery of their amount from plaintiffs.

VIII.

Before defendant can properly ask the interposition of a court of equity he should show that he himself has *done equity.*

At the expiration of the equity of redemption the whole amount of the incumbrance was $3 613 20, one third of which, or $1,204 40 would fall to the share of defendants land. At the same time he was owing on his notes a trifle less than $1400. Mitchell, after obtaining the certificate of purchase, offered defendant to deed him his share upon payment of his proportion of the redemption money. Also, Putnam, the partner of Mitchell, and interested with Mitchell in the land offered to let defendant have a deed for his land if he would pay the amount that was then due on his notes. Afterwards Putnam directed witness, Meacham, the holder

of the notes, to communicate to defendant the same offer. This was done, but the offer was declined by defendant. He neglected to make the payment, and so lost his land. Had he done what he was legally and equitably bound to do, his land would have been saved to him. Ought he now to complain when, had he performed his part of the very contract out of which this suit has grown, the title to his land would have been made precisely what the plaintiff covenanted it should be. The defendant instead of bringing his action at law has sought his relief in a court of equity. He should be compelled to show himself, without default, before calling upon the plaintiffs to respond to him in damages.

IX.

The Court below decided correctly in refusing to remunerate defendant for his improvements, or the enhanced value of the land. This rule seems too well settled to admit of discussion.

Staats vs. Ten Eyck, 3 Cames, 111; Pitcher vs. Livingston, 4 John, 1; Bennett vs. Jenkins, 13 John, 50; 4 Kent. Com., marginal paging, 475 and 476 and notes. Major vs. Dunnevans, 25 Ill., 262; Sedgwick on Meas. of Dam, 159 and following pages, where the principle is fully discussed. Fraud, although alleged in the bill, does not appear in proof, and cannot be taken into consideration in determining the question of damages.

Upon the record before the Court the decree of the Court below should be reversed and a decree entered here dismissing the bill.

J. M. BAILEY,
Att'y. for Plff's. in Error.

148-61

Ohling et al.

v.

Lutgens

Rlfs. brief

Filed Apl. 28. 1863.

S. Ireland

Clk.

See 14 or 18 Wls. as to question of interest & mesne profits - on eviction. &c.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, · APRIL TERM, A. D. 1863.

BERENTJE OULING, *et. al.*,
vs.
LUITJEN LUITJENS.

Points and Authorities for Defendant.

The first and third positions of the plaintiff in error, we think, after careful reflection, are well taken. The consideration money mentioned in the deed and interest, not the aggregate of the down payments, and with the face of the notes added thereto and interest on the same so made should be the measure of recovery.

We think also that the owner of the equity was entitled to the possession until the execution of the master's deed, and that he should not have rents and profits and interest, too, before that time.

We concede, therefore, that the recovery should be for no more than $2,250, and interest from March 10th, 1859 to the date of the decree rendered here if this court renders a decree for that amount.

The second point is not well taken. The fact that $1,000 paid down and the notes for $400, $600 and $550 made an aggregate amount of $2,550, instead of $2,250 as stated in the deed, does not disprove the allegation that $2,250 was the consideration, of which $1,000 was paid down, and notes for the balance of $1,250 were given. The notes are payable at a future time without interest, and the interest between date and maturity is undoubtedly included in the face of the notes. The difference is $300, and this will be readily accounted for in this way. There is, therefore, no variance between the allegations and proof.

We will consider the fifth and sixth points together.

Undoubtedly as far as the covenants against incumbrances is concerned, though the existence of the prior mortgage is a breach, the damages are nominal till the complainant has paid it off and been evicted under it and unless there is an eviction, we cannot recover under this covenant more than nominal damages, not having paid off the mortgage. The deed, however, contains a covenant of warranty, and if there is an eviction under a breach of this covenant, the damages are not nominal. We claim that the measure of damages under such a breach is the consideration money and interest from March 10th, 1859.

By the recovery, the right of redemption is gone as to the complainant. Having recovered, under this breach, his consideration money of his grantors, of course his right to redeem would be lost. A grantee in a deed containing covenants of warranty by a recovery of his consideration money back from his grantor, would be estopped from claiming any title to the equity of redemption through the deed. In an analogous case, in the 8th of Pickering, 557, it is held that the amount necessary to redeem is the measure of damages, and not the value of the land. In Mass., the value of the land, not the consideration money, is the general rule in cases of breaches of covenants, of seizin and warranty, but the idea that a recovery should destroy or waive the right to redeem, is not considered, and yet we think the complainant ought to have the right to adopt the foreclosure as against his grantors. See 3d Metcalf, 81, and it would seem that he ought have the right, after the mortgage on the land had been foreclosed, in a suit against the heirs of the mortgagors, and they had failed to redeem from the sale under the decree as they ought, in justice to the grantee of the equity to have done, to waive his right to redeem and sue for his purchase money. He ought not to be required to pay off a mortgage, which it was the duty of his grantors to have done, if he prefers to acquiesce

in the decree of the foreclosure from which his grantors would not redeem, and, whether we regard the grantee in the master's deed as the owner of the legal estate or only of the mortgage, after condition broken, he could have maintained ejectment against the complainant, and, therefore, the surrender of the possession was to one who by virtue of paramount title was in a position to evict him legally, and he was therefore justified in surrendering voluntarily ; having so surrendered he is evicted by title paramount, and the measure of damages should be the consideration money and interest, because the unavoidable effect of recovery here is to deprive him of the right to redeem.

He cannot, of course, have his purchase money back and also be in equity in a condition to redeem from the sale under the mortgage.

We claim therefore, that he may waive a right to redeem after his grantors have refused to do so, as it was their duty, and on eviction, recover back his purchase money and interest, as one who has lost his legal title, which he would have obtained by his deed if there had been no mortgage; and that he has lost his equity of redemption by electing to acquiesce in the foreclosure of his equity by bringing the suit on the covenant

It is said that it is not proved that the title under the deed of the master is paramount, because it was not shown that there was title in the mortgagor—Ralph R. Ohling. There is evidence that a life estate was devised to the widow of the deceased mortgagor and if there is no devise of the land in controversy to the other grantees in the deed to the complainant, there is evidence that the grantors were the widow and only heirs of Ralph Ohling. Therefore, the grantee in the masters deed, and the complainant, do claim, from a common source, and the mortgage title is the older and paramount one from the same source. The grantors of the complainant, claim by descent, not by purchase it is true, but that we take it makes no difference. If it be as contended, that this land was not devised, they then take by descent.

Then, by the eviction by paramount title, the measure of damages was right. If the court should think the suit premature before the complainant has redeemed, and that the only breach is that of the covenant against incumbrances, and the damages nominal, we claim a reversal of the decree, rather than one here for the nominal damages, as the latter might bar a recovery hereafter when we shall have redeemed if we do. Rawle on covenants for title 84

The point in relation to the Jurisdiction of the court of equity, is abandoned on the other side, because it was not set up in the answer that the relief, if any, was at law. The authorities are so. See the following :

We do not think the complainant was obliged to take a deed from those claiming under the master's deed, and pay up his notes.

He is not compelled to do this legally, though perhaps it would have been a good thing for him to have done so if he had had the money to pay his notes. He has this legal right to make his own bargains, however.

BRIGHT & BRAWLEY,
LELAND & BLANCHARD,
For Defendant in Error.

118

Benefit Oldham's use
vs
Luther Ludgeo'
Defendants - Brief

Filed May 13, 1843
L. L. Lane Clk